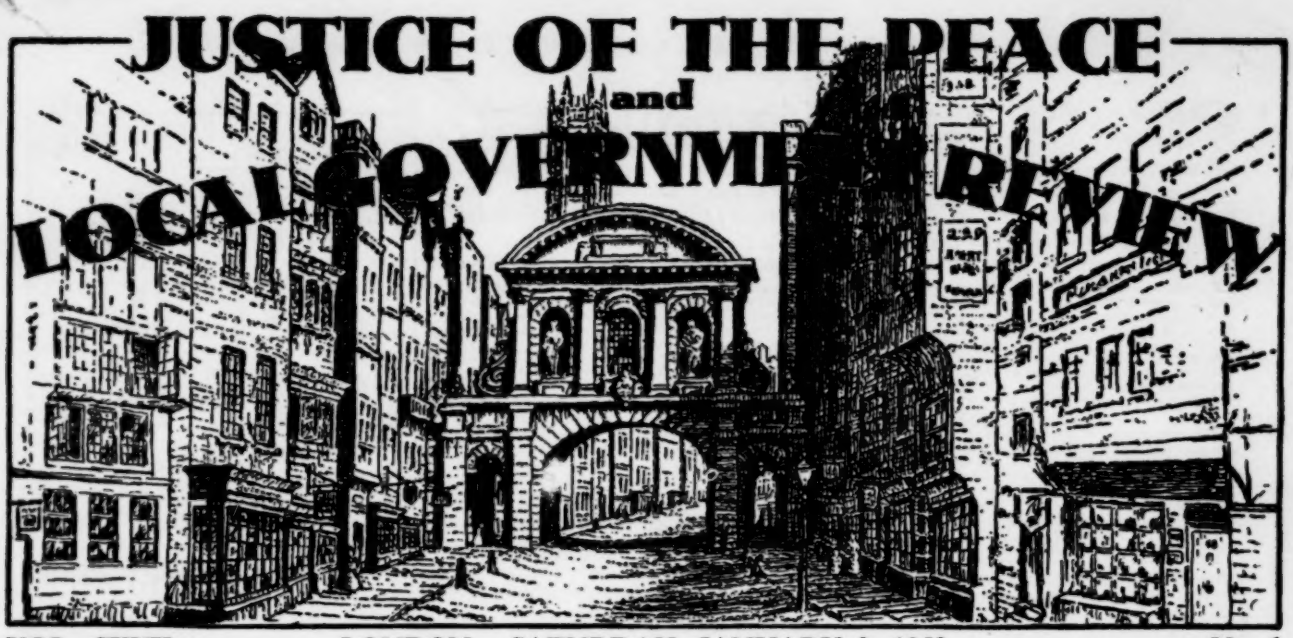

VOL. CXVII LONDON: SATURDAY, JANUARY 3, 1953 No. 1

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REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt* 10 *a.m. Thursday*

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note:* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

INQUIRIES

YORKSHIRE DETECTIVE BUREAU T. E. Hoyland. Ex-Detective Sergeant. Member of B.D.A., F.B.D., Associated American Detective Agencies, and the World Secret Service Association. Confidential enquiries; Divorce, etc.; Over 600 agents in all parts of the World. Over twenty-five years C.I.D. and Private Detective Experience at your service. 1, Mayo Road, Bradford. Tel.: 26823 day or night.

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BOROUGH OF HORNSEY

Appointment of Deputy Town Clerk

APPLICATIONS are invited from Solicitors experienced in municipal law and practice for the above appointment.

The salary and conditions of service will be in accordance with the recommendations of the Joint Negotiating Committee (Scale E—Salary £1,250—£1,450) and the appointment is subject to the provisions of the Local Government Superannuation Act.

Applications, which must be made on a form to be obtained from me, must be returned not later than January 23, 1953.

Canvassing will disqualify.

T. FYANS,
Acting Town Clerk.

Town Hall,
Crouch End, N.8.
December 29, 1952.

COUNTY OF SURREY

Petty Sessional Division of Wallington

(Re-advertised)

APPLICATIONS are invited for the post of Second Assistant Clerk to take up duties on February 1, 1953. Salary Grade III National Scale, plus London Weighting.

Applications, with two copies of recent testimonials, must reach the undersigned by January 17, 1953.

A. J. CHISLETT,
Clerk to the Justices.

COUNTY OF MIDDLESEX

Edmonton Petty Sessional Division

CLERK to the Justices requires two Junior Male Assistants aged twenty-one or twenty-two years and having completed National Service, preferably with some magisterial or legal experience. The appointments are superannuable, but, initially, unestablished.

Salary is £280 per annum at twenty-one years; £295 per annum at twenty-two years, rising to £310 per annum at twenty-three years, together, in each case, with a temporary additional cost of living allowance of £50 per annum.

Applications, stating age and giving particulars of education and experience, together with copies of two recent testimonials, should reach the undersigned not later than January 14, 1953.

L. A. C. PRATT,
Acting Clerk to the Justices.

Court House,
Lordship Lane,
Tottenham, London, N.17.

LICHFIELD AND BROWNHILLS DIVISION
(County of Stafford)
and
CITY AND COUNTY OF LICHFIELD

First Assistant to the Clerk to the Justices

APPLICATIONS are invited for the above whole-time appointment. Applicants should be competent shorthand typists with experience of issuing process, keeping Fines and Fees Accounts and be competent to take occasional Courts. Salary £490 to £610 according to qualifications and experience.

The successful applicant will be required to pass a medical examination, and if he is transferred to the staff of the County Magistrates' Courts' Committee on April 1, 1953, the appointment will then become superannuable.

Applications, giving age, particulars of present duties, and previous experience, together with copies of two recent testimonials, must reach me not later than January 14, 1953.

PETER J. C. TENCH,
Clerk to the Justices.

24, Bird Street,
Lichfield,
Staffs.

Justice of the Peace
and
Local Government Review

[ESTABLISHED 1837.]

VOL. CXVII. No. 1. LONDON: SATURDAY, JANUARY 3, 1953

Price 2s. 3d. (including Reports)
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Pages 1-16

Offices: Little London, Chichester, Sussex.

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NOTES of the WEEK

Solicitors asking Police for Information about Defendants

A correspondent, referring to the observations of the Court in *R.* v. *Crabtree* [1952] 2 All E.R. 974 writes: "All those practising in Courts of Summary Jurisdiction will be aware that their clients often withhold from them information as to previous convictions, but it is manifest that when a client tells one he has no such convictions, one cannot then proceed to ask him for authority for requesting details thereof from the police. Thus solicitors will never be sure that they know the truth about this vital matter, and the manifold difficulties that confront them will be materially increased."

All this may be true enough, but some people would answer that if a defendant chooses to mislead his own legal advisor who is doing everything possible for him, he deserves any unpleasant consequences that may follow because that advisor handled the defence in the belief that his client had told him the truth. One may feel sorry for the solicitor without being at all sorry for the dishonest defendant. It is to be noted that in *R.* v. *Crabtree*, *supra*, the Lord Chief Justice said: "Generally, the solicitor would be well advised to find out from his client before the trial whether his client has a criminal record, because otherwise counsel may be instructed in such a way that he may unwittingly let in evidence of his client's convictions. It is, therefore, desirable that the solicitor should know if the client for whom he is appearing has previous convictions, but no objection can be taken to the warning given by the Secretary of State that the police officer should be sure that the solicitor has his client's authority for requesting information."

Striking a Club off the Register

The procedure to be followed before a club may be struck off is laid down in s. 95 of the Licensing (Consolidation) Act, 1910, but it must be admitted that this section is not free from ambiguity. The section provides that a court of summary jurisdiction on complaint in writing by any person may, if they think fit, make an order directing the club to be struck off the register if one or more of the grounds detailed in that section are found to exist. It is further provided that "If the court grant a summons on the complaint, the summons shall be served on the secretary and on such other person, if any, as the court may direct."

The interpretation which is frequently placed upon these provisions is that since the power of the court is to make an order on complaint the whole procedure of the Summary Jurisdiction Acts must be applicable, and accordingly no order can be made unless a summons has been issued and served. On this view it is argued that, although the wording is not very happily chosen, the expression "If the court grant a summons" was inserted to meet the possibility of a summons being refused on the ground that the cause of the complaint appeared inadequate. The alternative interpretation is that the words "If the court grant a summons" give the court a discretion to issue a summons or to deal with the matter *ex parte*. In support of this view it is argued that the section does not say in so many words that the complaint is to be pursued as any other complaint made under the Summary Jurisdiction Acts, and it was for this reason that this provision concerning the issue and service of process was inserted. Further it is pointed out that one of the grounds on which the club may be struck off is that it has ceased to exist and in these circumstances it may be impossible to trace the secretary, and it was to meet such a contingency that the court was given powers to make an order *ex parte*.

There is clearly much to be said for both views, and although we incline towards the first we do not think that a court would be laying itself open to censure if it made an *ex parte* order where the ground of the complaint was that the club had ceased to exist, and where the secretary could not be traced, but in any other circumstances the court should be very chary of assuming that it has powers to make an order unless a summons has first been issued and served.

Treatment of Offenders in Uganda

The report of the Commissioner of Prisons in the Uganda Protectorate for the year 1951 shows that in spite of difficulties about buildings and staff, which evidently exist there as well as in this country, real progress can be recorded. In addition to an existing Reformatory there has now been established an approved school, which is under the control of the Director of Education. A number of boys considered suitable for the new School have been transferred from the reformatory and so relieved some congestion.

There has been an increase in the prison population, but this fact is not so disturbing as it might seem, as the report says: "The enlargement of the Protectorate Police Force, the establishment of additional Police Stations, and improved methods of crime detection, are probably the reasons for the increased prison population rather than any sudden increase in crime." There has been a definite improvement in the training of prisoners, in part due to the better training of officers and in the discipline among the subordinate staff, and no difficulty has been encountered in placing in employment any who required work on their discharge from prison.

There is a central prison for about a thousand prisoners under maximum security conditions, while there is also a Prison Farm thirty-six miles from Kampala for 400 long term first offenders. In addition there is a Quarry Camp with grass roof mud huts for 250 prisoners. A number of new district prisons have been built, and it is considered that others are required.

We have long been aware of the fact that there is not necessarily any close connexion between unemployment and crime, and that prosperity sometimes appears to lead to an increase in certain offences. Here is what the Uganda report has to say :

" Reference to the annual reports for previous years shows that there was a noticeable increase in the number of " offences against the person " during 1951, and it is probable that this is in part attributable to good harvests resulting in increased prosperity with a consequent more frequent indulgence in beer parties which invariably leads to violence."

In view of this prosperity it is somewhat surprising to learn of an increase in the number of committals to prison in default of payment of fines, as to which the report says the reason is not apparent. There has also been a marked increase in the number of persons remanded, of whom fifty-four *per cent.* did not return to prison after remand. This looks as though there is in Uganda, as in this country, a growing practice of ordering remands for the purposes of inquiries, often followed by probation or some punishment other than imprisonment.

An interesting item concerning aid on discharge is given. A man who had learned in prison the trade of boot and shoe repairing was furnished with the necessary tools in order that he might continue the same kind of work in his home : " Recent reports indicate that the money so spent has been a good investment and there is every likelihood that the man has learned his lesson."

The report which deals with probation expresses the hope that in 1952 preparations will be made for future expansion and the consolidation of the present service by instituting some theoretical training which, so far, has not been given to any of the Assistants.

Approbation of a Marriage

At 116 J.P.N. 193, we referred to the case of *W.* v. *W.* [1952] 1 All E.R. 858, where it was decided that the joint adoption of a child by the parties was evidence that in the circumstances of that case, the husband had approbated the marriage and could not thereafter obtain a decree of nullity.

In *Tindall* v. *Tindall* (*The Times*, December 18) a decree of nullity was refused on the ground of approbation by a claim for maintenance. The wife had obtained a decree of nullity on the ground of non-consummation, but the Court of Appeal reversed this decision.

In the course of his judgment Singleton, L.J., stated that the wife had taken proceedings before justices alleging desertion and persistent cruelty. The summons was dismissed and she appealed to the Divisional Court. Her appeal was dismissed. The learned Lord Justice went on : " The case for the husband was that there was conduct on the part of the wife which showed approbation of the marriage. She clearly knew the facts and the law, it was said, and with that knowledge she put forward a case before the justices, the foundation of which was the marriage, as the complaint showed. She sought to obtain an order against the husband to which she could only be entitled if he was her husband, and she persisted in the claim by appealing to the Divisional Court ; and in three letters, two before and one after the proceedings, she showed the same spirit . . . If ever a party to such a suit did approbate a marriage surely this wife did . . . It surely must be contrary to public policy that a spouse should be able to go as far as the Divisional Court relying on the validity of a marriage, and thereafter succeed on a petition for nullity if, as in the present case, she had knowledge of the facts and of the law. In my opinion there was approbation on the facts of this case, and approbation of a kind which would make it inequitable to grant a decree of nullity to the wife."

Probation in Surrey

The Home Office scheme for training probation officers has, we believe, up to now provided a sufficient number of suitable candidates for appointment, so as to provide additional officers when necessary and to replace those who transfer or who leave the service by retirement or resignation. It is, therefore, a little unexpected to find, from the report of the Surrey probation committee, that difficulty is now being experienced in that county. The report states :

" But the Training Board output is seasonal in character and the flow to the south-east appears to be drying up, either because for the time being those officers who desired a change have found their niche already or, more likely, because the high cost of a move, and the problematical chance of finding living accommodation when they make it, deter officers from changing except in cases of urgency. Whatever the reason, the committee had the unique experience during the year of being unable to fill a post because there was no response of any kind to their advertisement. This is a matter which must cause them some concern especially as so many of the officers in their employment have the ambition to seek and the qualities to obtain responsible posts elsewhere."

There is no doubt that provision of so many welfare services of various kinds can easily lead to overlapping, some waste of time and effort, and occasionally to a certain amount of friction. The Surrey report refers to a Home Office conference at which this subject was discussed.

" There are, it would seem, areas where the education department, the children's service and the probation service do not function with the harmony and mutual co-operation which are to be desired, and where there is considerable overlapping of activity, particularly in the matter of attendance at court. The committee is glad to be able to record that in Surrey, thanks to the goodwill and co-operation of all concerned, friction is wholly absent and overlapping rarely, if ever, occurs."

Probation Results and Problems

The number of cases under supervision in the county during the year shows a marked increase, namely, from 2,048 to 2,631. The precentage increase in some areas has been remarkably high, and it seems probable that an increase in the number of probation officers will become necessary. The greatest increase is among boys aged fourteen to seventeen. This increase is regarded as very disturbing. " It may be of some significance that this age group includes three-quarters of the lads who are in that difficult period between their release from school and their absorption into the armed forces, when there is little inducement to them to settle down, but this suggestion clearly cannot be pushed too far since the largest increase amongst the girls is in the same group."

The percentage of cases completed satisfactorily was eighty-four, which must be considered a good result obtained under conditions of some difficulty. Of sixty-eight cases from quarter sessions completed during the year only forty-four were considered satisfactory. The report suggests that there may have been a tendency at quarter sessions, in recent years, to experiment with probation in cases for which it was not really appropriate. The report comments : " If such a tendency does exist anywhere it is to be deplored, not only because it must bring probation into disrepute but also because it may result in wrecking lives that by firm treatment at the right moment might have been saved from crime."

Wiltshire

Mr. R. M. Tough, F.S.A.A., names the charming towns of Wiltshire in one table of his Abstracts of Accounts for 1951/52, and reminds us that in a county which includes Bradford-on-Avon, Chippenham, Malmesbury, Marlborough, Salisbury, and other districts equally attractive, his lot is indeed cast in pleasant places.

Total county rates for the year at 13*s.* 6*d.* fell short of actual requirements by less than a penny so that only a small call on balances was necessary, the general county fund balance at the end of the year amounting to the comfortable sum of £919,000. A penny rate for general county purposes produced £9,052. The county rate was below the general average and the county is even more favourably placed in the current year because while most other authorities were forced to increase their levies Wiltshire was able to take 6*d.* off its 1951/52 precept.

Total expenditure for the year was £5,072,000, education accounting for nearly £2½ millions, and highways needing the relatively large sum of £854,000. There are, however, 2,868 miles of road and 1,082 bridges to maintain. Incidentally we observe that the county council believes in direct control, only ninety miles of road being maintained by claiming or delegated county districts.

Loan debt has risen from £660,000 at March 31, 1943, to £1,410,000 at the corresponding date in 1952, but even the latter figure only represents £3 11*s.* 10*d.* per head of population. It should also be mentioned that £452,000 of debt is reproductive, having been incurred for the provision of smallholdings. The county council act as landlord for some 14,290 acres.

£1,475,000 of investments are held, including a number of loans to county districts. The policy of making such loans has been followed in Wiltshire for many years, and we imagine it to have been mutually advantageous. In recent years, however, differences between market rates of interest and the official P.W.L.B. rates have made the continuation of the policy difficult.

The reader is provided with numerous interesting statistics about different services on pages eight to eleven. We think that an improved lay-out and the inclusion of unit costs would enhance the usefulness of this section of an excellent publication.

DO YOU BELIEVE IN SHERIFFS?

Recently there strayed across the Atlantic, presumably carried by the wind, or birds, or the Gulf Stream or the *Queen Mary*, a copy of *The National Sheriff*, which is the organ of the National Sheriffs' Association of the United States. A glance at this enchanting publication is enough to bring home to any right-minded Englishman the need to overcome the dollar shortage at once, so that he may cancel his subscription to the *Justice of the Peace*, and take in instead *The National Sheriff*.

The cinema has made the sheriff an essentially American figure. Not one person in ten thousand in this country could say off-hand who is the sheriff of the county in which he lives, and would be disappointed and perhaps incredulous if that highly respectable officer were pointed out to him in the street. Every schoolboy knows that a sheriff (pronounced sher'ff) is a Man of Action, with a gleaming badge behind his lapel and a pair of six-shooters behind his rump. A real sheriff never fails to have the hero languishing behind the cell grille at the end of the first reel, and the villain snarling through the same bars at the end of the third. A real sheriff rides bareback, keeps a pet bloodhound, and has his pockets stuffed with handcuffs. Above all, the shirt of a real sheriff is embroidered in glorious technicolour.

At puberty, the English schoolboy puts away fairies and adopts sheriffs—not that he really believes in Carbine Callahan any more than he really believed in Tinker Bell ; but he would like to believe in him and if properly appealed to could persuade himself that he did believe in him, to the extent of joining his fellows in a shout of avowal at least as heartfelt as that which annually saves the life of Tinker Bell in the Christmas theatres. Here, then, is welcome news—*there really are sheriffs*, proper sheriffs, not in the past or on the screen but walking (or rather riding) this earth today, and you can read all about them in *The National Sheriff* if only you can find two dollars to pay the annual subscription.

Here in black and white (one does miss the technicolour) is a picture of Sheriff Arthur N. Jennison of Keene, N.H., photographed in the act of snapping the handcuffs on the wrists of a desperado whom the sheriff's bloodhounds had tracked through the woods. The sheriff was injured, but "what's a fractured foot when you have three dogs that will come through for you when the chips are down ?"

It is true that Sheriff Jennison is described as short and mild-mannered, and his shirt in the photograph might almost be described as chaste, but these shortcomings are atoned for by his colleague from Cass county, Ind., who is shown on the front cover wearing a shirt covered from neck to cuff with three-inch pictures of some fabulous hybrid between a turtle and a Colorado beetle.

The magazine is filled with enthralling stories about sheriffs who rescue injured men from angry rattlesnakes, and as a concession to modernity, haul them away in aluminium boats : enlightened sheriffs who fumigate the bug-ridden gaols : tough sheriffs who arrest underdressed models "cavorting on a dairy farm for the benefit of twenty-three photographers" : devil-may-care sheriffs who manage with one gun when the other is stolen : and old-style sheriffs who carry a rifle, because "the state law prohibits carrying a loaded pistol or shotgun in a car, but says nothing about rifles." There is an enthusiastic recommendation of a new scheme to insure sheriffs against law-suits for false imprisonment—obviously an unfair cramping of style. A whole page is given to the activities of the Junior Deputy Sheriffs, who are apparently enrolled at the early age of five on the side of law and order and given badges (but not six-shooters) to encourage them to stay there.

But the best of *The National Sheriff* is in its advertisements. There are enticing offers of uniforms, badges, holsters, loud speakers ("Command and Control with a Giant Voice") horse and sheep and human sera and other necessities of shrievalty : and the best of all is this :

THREE EXTRA GOOD
MAN-TRAILING
BLOODHOUNDS
READY FOR
DELIVERY. ALSO
EXCELLENT LITTER
OF PUPPIES
Sheriff Arthur N. Jennison
Keene, New Hampshire.

Surely our visitors to the U.S.A. should say, in return for the traditional praise of American visitors to us, "Your sheriffs are wonderful" C.

INTENTION IN MATRIMONIAL CASES

The law has always insisted that in the establishment of offences which involve the mind and attitude of one or other of the spouses towards the other partner or the *consortium* generally, intent is an essential part of the burden of proof. Even in the case of a specific physical act such as adultery intent may act as a bar to relief, for it will be readily agreed that both condonation and connivance may rest entirely, or almost entirely, on a mental attitude. They may, of course, find expression in concrete acts, but it is by no means inevitable that they should do so. Thus tacit acquiescence in an overtly illicit relationship may amount to connivance. Difficulties do not often arise here. Usually mind and deed work in such close conjunction that courts have little trouble in establishing the true situation.

Far otherwise is it with desertion and cruelty. Here the maxim that a person must be presumed to intend the natural consequences of his acts may be very difficult to apply in a given set of circumstances. Reported authority is an essential guide in such cases.

The principle that desertion represents the sum of an intention and a course of conduct proceeding from it is by now well established. Typical authorities for this proposition are *Pulford* v. *Pulford* [1923] P. 18 and *Thomas* v. *Thomas* [1924] P. 194. Far more difficult are those cases where a certain course of behaviour proceeds from an abnormal state of health or personal inclination. Equally trying are the cases where a course of conduct on the part of one spouse towards the other produces an abnormal effect on the complaining party because of some physical or temperamental defect in the latter.

The most distressing cases are those in which some form of mental instability is at the root of the trouble. Here a most helpful authority is *White* v. *White* [1949] 2 All E.R. 339; 113 J.P. 474. Here the wife initially summoned the husband on the grounds of desertion, persistent cruelty, and neglect to maintain. But, following an adjournment of these proceedings, the husband petitioned for divorce on the grounds of his wife's cruelty. The allegations of the husband amounted to a succession of hostile acts by the wife, together with antagonistic remarks, which eventually drove the husband from the home. Through the Official Solicitor the wife filed an answer, of which the most important element was the fact that she had been certified as a person of unsound mind, and that she did not know the nature and quality of the acts alleged against her. The learned commissioner found that the wife's insanity at the material time was established, and that it effectively disposed of the husband's case: for, he held, although the wife might well have known what she was doing, her knowledge was the product of a diseased mind, and it would therefore be wrong to find in favour of the husband.

Upon the husband's appeal Bucknill, L.J., referred to the leading case of *Hanbury* v. *Hanbury* [1892] P. 222. Here the then Master of the Rolls said that " whenever a person did an act which was either criminal or culpable, which act, if done by a person with a perfect mind, would make him civilly or criminally responsible to the law, if the disease in the mind of the person doing the act was not so great as to make him unable to understand the nature and consequences of the act which he was doing, that was an act for which he would be civilly or criminally responsible to the law." Bucknill, L.J., proceeded to infer from this and other authorities that, to avail a spouse charged with matrimonial cruelty, insanity must not " fall short of such insanity as would afford a defence to a criminal charge within the M'Naghten Rules." The test was whether the spouse knew the nature and quality of the acts complained of. His Lordship, after reviewing the evidence in the case, found that the wife did indeed know the nature and quality of her acts, and that she never indulged in such behaviour unless alone with her husband. Denning, L.J., concurring that the appeal should be allowed, added some observations in which he distinguished between the intent required to establish desertion and that needed to support a charge of cruelty. In the latter all that is required is an intent to aim the acts at another : there need be no specific intent to injure (*see* below for the authority for this proposition). But in desertion, as intent to terminate a state of things is vital to the proof of the offence, " insanity is a defence if it is of such a degree as to make the man incapable of forming that intent."

The reasoning in *White* v. *White*, *supra*, was applied in the case of *Lissack* v. *Lissack* [1950] 2 All E.R. 233; 114 J.P. 393. Here insanity was pleaded in defence to a charge of cruelty on the part of the husband. In coming to the conclusion that the defence of insanity did not avail the husband Pearce, J., emphasized that the essential factor affecting a court's decision in cases of cruelty was the wife's prospective safety in the future : " the question for the court is whether the wife can with safety to life and health live with the husband . . . To withdraw from the ambit of legal cruelty conduct that is intolerable, but is due to insanity, is to make the court powerless to help in cases where help may most be needed."

Squire v. *Squire* [1948] 2 All E.R. 51; 112 J.P. 319, is authority for the proposition with regard to intent to injure to which we referred above. Here the wife was admittedly ill. The husband's petition on the grounds of cruelty was based upon the wife's ceaseless demands upon his time and attention, even to the point of denying him sleep by expecting him to read to her. The petition was dismissed because the learned judge held that the wife's attitude had in it no element of deliberate malignance. Upon the husband's appeal Tucker, L.J., said : " One starts with the undisputed proposition that, generally speaking, a man is presumed to intend the natural and probable consequences of his acts. Is there any authority which decides that this is inapplicable to acts amounting to cruelty in matrimonial causes ? . . . On the contrary, there is a considerable body of authority to the opposite effect." His Lordship pointed out that in the leading case of *Russell* v. *Russell* (1897) 61 J.P. 756, there is no suggestion that motive is a necessary element of cruelty. His Lordship said he was unable to agree with the words of Henn Collins, J., in *Astle* v. *Astle* [1939] 3 All E.R. 967, to the effect that " intention or malignity is an essential ingredient in cruelty." In his view the case was covered by a sentence in the judgment of Shearman, J., in *Hadden* v. *Hadden* (1919) *The Times*, December 5. " I do not question he had no intention of being cruel, but his intentional acts amounted to cruelty." In *Squire* v. *Squire*, *supra*, the husband's appeal was accordingly allowed. Before we leave this interesting case we feel we must draw attention to the argument of Evershed, L.J., to the effect that a spouse's acquiescence in a cruel course of conduct because of the possible results of retaliation should not be held against him or her when ultimately resorting to the courts for relief.

The decision in *Squire* v. *Squire*, *supra*, has been very recently approved by the House of Lords in the case of *Jamieson* v. *Jamieson* [1952] 1 All E.R. 875; 116 J.P. 226. It is interesting to note that in this case the statement by Shearman, J., quoted above, was commended as a model statement of the position in these matters.

What is the position if conduct which proceeds from a spouse's character or inclinations is used as a defence in a case of constructive desertion? Two authorities on this point are well-known. The first is *Buchler* v. *Buchler* [1947] 1 All E.R. 319; 111 J.P. 179. In

this case the husband formed an intimate association with one of his male farm hands. Whilst not of an improper nature the friendship was so persistent as to cause comment amongst neighbours, and distress to the wife. She told her husband that unless the association ceased she would have to leave him. Nevertheless he persisted and, indeed, said that she could go. Upon the wife's petition for divorce on the grounds of desertion Wallington, J., found in her favour ; but upon the husband's appeal this decision was reversed. Since the case turned precisely upon the question of intention its arguments are of particular concern. Lord Green, M.R., pointed out how easy it would be to introduce an effective new ground for divorce (and, by implication, separation) if an unduly broad view were taken of the type of conduct required to justify a spouse leaving the other. Such conduct, said his Lordship, must clearly be of a grave character. It was not sufficient merely to be satisfied of a spouse's distress of mind or personal inconvenience : the legislature has not thought fit to make the continuous unhappiness of one spouse, caused by the unkindness, the lack of consideration, the selfishness, or even the drunken degradation, of the other spouse a ground for obtaining a dissolution of the marriage." His Lordship proceeded to find that, while the husband's conduct in this case had caused his wife great unhappiness it was not of such a nature as to justify her claim to have been dismissed from the *consortium*. " If conduct is not a justification for one spouse to leave the other, it cannot be made so by threats of this kind (*i.e.*, the wife's threats to leave the home unless her husband's unusual conduct ceased). Moreover, if the conduct in question is in its nature insufficient, a statement that if she does not like it she could go . . . could not . . . give to that conduct the character of desertion in fact . . . Mere wish to expel, even if it exists, without acts equivalent to expulsion, is, in my opinion, insufficient to constitute constructive desertion."

Finally we would refer to *Kaslefsky* v. *Kaslefsky* [1950] 2 All E.R. 398 ; 114 J.P. 404, where the husband sought a divorce from a wife who refused him intercourse for much of the marriage, and who, he alleged, was lazy and sluttish, neglecting him and the children. The petition was dimissed, and this decision was upheld on appeal. The gist of the Court's finding was that the conduct complained of proceeded from defects in the wife's character and temperament, and that she was not animated by any intent to injure her husband. Denning, L.J., summed up the position as regards intent in these words : " The presumption that a person intends the natural consequences of his acts is one that may—not must—be drawn. In cases of this kind . . . the conduct only becomes cruelty when the justifiable remonstrances of the innocent party prevoke resentment on the part of the other, which evinces itself in actions or words actually or physically directed at the innocent party." It is important to note that the Court distinguished this case from *Squire* v. *Squire*, *supra*, on the grounds that in the latter the wife's inordinate demands, whilst not proceeding from a desire to injure her husband, yet injured his health. " Cases of this kind must . . . be carefully watched. When there is no intent to injure, they are not to be regarded as cruelty unless they are proved to cause injury to health."

To sum up, it may be stated that the doctrine that intention is essential to found a charge of desertion remains unimpaired. In cases of cruelty malignant intent is not a necessary part of the burden of proof ; but relief may, and probably will, be given if the safety or health of the innocent spouse is in danger. It is firmly established that conduct which, on final analysis, is no more than highly exasperating will not, of itself, avail for relief.

TIGERS IN MAYFAIR

By J. MONTGOMERIE, *Barrister-at-Law*

At the inquiry into the London County Council's development plan there was much talk of " tiger " areas in Mayfair. The name brings to mind the fact that there have been tigers in Mayfair before, but probably not for about two hundred years. The eighteenth century tigers were fierce ; those of today are altogether tamer.

Mayfair was originally spelt May Fair and derives its name from an annual fair held there in May. The origin of this fair is not clear ; it is mixed up with a livestock market for which a franchise was granted in 1688. The whole fair lasted sixteen days. The first three were taken up with the serious business of selling cattle. The remainder were devoted to amusements at the booths and sideshows.

Chief among the attractions of the stalls was the display of wild animals in captivity and of curiosities of nature. There you could see the dancing mare, the man with one head and two bodies, the fairy a hundred years old, and the child with three legs. In 1708 the brawling and debauchery which accompanied the fair caused efforts to be made to suppress it. The presentment of a grand jury in Westminster declared it to be a public nuisance on account of the quarrels, tumults, and shedding of blood which it occasioned. Accordingly it was prohibited except for the cattle market of the first three days.

This event was reported in *The Tatler* in May, 1709, as follows: " Yet that fair is now broke ; but it is allowed still to sell animals there. Therefore if any lady or gentleman have occasion for a tame elephant, let them inquire of Mr. Pinkethman who has one to dispose of at a reasonable rate. The downfall of May Fair has quite sunk the price of this noble creature as well as many other curiosities of nature. A tiger will sell almost as cheaply as an ox ; and I am credibly informed that a man may purchase a cat with three legs for very near the value of one with four."

The fair was revived a few years later and continued until finally abolished in 1760.

The modern tiger of Mayfair is a pin-striped affair, a creature of the jungle of planning law. The development plan is delineated on a gigantic map. Certain areas are hatched with brown stripes on this map. Because of the hatching they have been nicknamed " tiger areas." If the council, who are seeking to stop and put into reverse the movement of commerce into Mayfair, get their way, they are prepared to grant temporary permission for buildings in the tiger areas to be used as office accommodation at least until 1971. In other areas zoned for residential purposes in the plan, permission will be given only in special cases. In contrast therefore to the Lady of Riga it is those who are inside the tiger who can afford to smile—rather wanly, perhaps—even if they are in the dark about their ultimate fate.

There have been no reports to date of tumult or shedding of blood in the battle now raging over Mayfair and other parts of London. Planners' jargon has taken the place of the cries of the fair. Instead of the raucous voice of Tiddy-Doll, the vendor of

gingerbread depicted by Hogarth, learned counsel assert or deny in measured tones the "unre-residentializationability" of Mayfair. The public do not exactly flock to this free show at the County Hall, which has already lasted longer than the sixteen days of the ancient festivities.

The final decision rests with the Minister of Housing and Local Government. Whatever the result, it is to be hoped that the eventual redevelopment of the tiger areas will not exhibit that "fearful symmetry" which the poet Blake associated with the beast. Of one thing we can be tolerably certain. The fair will not be revived and real live tigers will not be on display again in Mayfair.

RECOGNIZED CONDITIONS FOR CHIEF OFFICERS

By A LOCAL AUTHORITY CORRESPONDENT

The Industrial Disputes Tribunal have lately dealt with a number of disputes regarding the salaries of local authority treasurers, engineers, chief education officers, and architects in charge of departments. The trade union acting on behalf of the officers in all these cases was the National Association of Local Government Officers, and in all cases the disputes arose because the recommendations of the Joint Negotiating Committee for Chief Officers of Local Authorities had not been adopted by the employing authorities concerned. The Tribunal found in favour of the trade union's claims in each dispute.

The cases were reported to the Minister of Labour and National Service as "disputes" under art. 1 of the Industrial Disputes Order, 1951. The Minister referred the disputes to the Tribunal for settlement in accordance with the provisions of that Order. The cumulative effect of the "case law" in these decisions seems to indicate that the recommendations of the Joint Negotiating Committee, about whose status as a Whitley body there has been much argument, can be taken to be "recognized terms and conditions" within the meaning of art. 2 of the Order. It will be of interest to see, therefore, whether the trade union will report any future disagreements as "issues" rather than "disputes."

The recent cases include a number of the "medium-size" as well as smaller authorities. Award I.D.T. 234 dealt with the officers of Blaydon Urban District Council (population 30,791); I.D.T. 253 was in respect of officers of Stanley Urban District Council (population 48,000), and of the same population group was I.D.T. 232 in favour of the officers of Wallsend Corporation. Other recent cases were I.D.T. 253 (Swansea Corporation: population 161,000), I.D.T. 246 (South Shields Corporation: 106,600), I.D.T. 241 (Northampton Corporation: 104,000), and I.D.T. 250 (Gateshead Corporation: 115,000).

CASE OF TRADE UNION

The cases submitted by the trade union followed a common pattern, and that in the Northampton dispute may be taken as typical. This authority comes within the 100,000 to 150,000 population range of the Joint Negotiating Committee's scales. The trade union submitted that the county borough council is a member of two of the organizations, namely, the Association of Municipal Corporations and the Association of Education Committees, comprising the Employers' Side of the Joint Negotiating Committee. A statement was produced to show that the great majority of local authorities affected by the Committee's recommendations had already adopted the scheme or were operating conditions not less favourable than those set out in the scheme; a list of county borough councils falling within the same population range under the scheme as the Northampton Corporation showing the salaries paid by each council to their treasurers, surveyors, chief education officers, and architects respectively was also produced, together with a statement showing the salaries paid to their various chief officers by all other county borough councils throughout England and Wales; it was pointed out that there are in fact twenty-six county borough councils with populations of less than 100,000 who are paying their chief officers at salaries in excess of those paid by the Northampton Corporation. It was accordingly contended that the recommendations of the Joint Negotiating Committee should be applied in their entirety to the four officers concerned in the case.

CASE OF THE EMPLOYERS

Although there was more variety in the cases submitted by the employing authorities concerned, that of Northampton may again be taken as typical. The corporation submitted details of the salary paid to each of the officers concerned at the date of appointment to their present post, and it was pointed out that the salaries being paid to the treasurer, engineer and surveyor, and architect, who have held their appointments for a considerable period, represent substantial increases well beyond the limits of any annual increments originally envisaged. It was contended that population does not provide a satisfactory measure by which to assess the salaries of chief officers; that local factors should be taken into account; that the interests of the ratepayers must be borne in mind; and that a local authority should be free to select and engage its own chief officers on terms mutually agreed to be appropriate. It was submitted that the duties of the officers have tended to become less onerous since they were first appointed to their present posts; that the salaries were adequate in relation to their present duties; that in any event no increases are justified in the present economic conditions; that the fact that other county borough councils adopted the recommendations of the Joint Negotiating Committee does not establish their propriety in relation to the Northampton Corporation; that the recommendations have no binding force in law and lack any moral sanction; and that the corporation should not be forced to observe them by a decision of the Tribunal.

SOME SPECIAL POINTS

South Shields Corporation made the point "that the corporation object in principle, and have consistently objected from the earliest days, to the activities of the Joint Negotiating Committee" (evidence of which will be found in *R.* v. *National Arbitration Tribunal and Another: Ex parte South Shields Corporation*), and reference was also made to the claim that "the population of the county borough is preponderantly composed of weekly wage-earners."

In the Swansea dispute, the corporation were represented at the hearing, but no submissions were made to the Tribunal on their behalf.

The Gateshead dispute covered the borough surveyor, the director of education, and the borough treasurer. The case of the corporation included the contention that the corporation had never been consulted about the recommendations of the Joint Negotiating Committee and that they had never assented to them ; that the corporation neither own nor control any public undertakings and that, in consequence, the responsibilities of the chief officers concerned are not as great as those of chief officers of many other local authorities ; that each of the council's departments is under the control and supervision of an officer who reports direct to the responsible committee of the council and not to the chief officers concerned in the case ; that having regard to the difference in the duties and responsibilities of officers of the same grade the principle of uniform gradings for chief officers throughout the country based solely on population is impracticable and undesirable ; and that the fact that the Joint Negotiating Committee more recently, in issuing recommendations regarding the salary scales of certain other classes of chief officers, and of deputy chief officers and other officers occupying posts which carry salaries of over £1,000 a year, recommended that decisions as to their grading should be based on conditions applying to the individual cases rather than on a titular or national basis, confirms the corporation's views on this point.

The case of the Stanley Urban District Council included the submission that " the salary scales at present applicable to the chief officers concerned were fixed in 1946 by the Disputes Committee of the North Eastern Provincial Council for Local Authorities' Administrative, Professional, Technical and Clerical Services ; it was submitted that these salaries are reasonable and adequate remuneration for the duties performed ; that the rateable value and rate product are low and that the implementation of the recommendations would lead to an increase in the present rate and to hardship to the ratepayers."

REFERENCES AND AWARDS

In each case the dispute was described as " The dispute arises out of an application made by the said workers that the..... council should implement the Recommendations of the Joint Negotiating Committee for Chief Officers of Local Authorities in respect of..... and ..... " The Tribunal do not state the reasons for decisions and in each case the award simply states that careful consideration was given to the statements and submissions on behalf of the parties and the Tribunal " find in favour of the claim and award accordingly."

It will be noted that all these disputes relate to the four designated chief officers covered by the Joint Negotiating Committee's recommendation of September, 1950 (blue agreement). The Committee also negotiates in respect of all other officers, except clerks of authorities, whose salaries should exceed £1,000 a year (*see* recommendations of May, 1952 (white agreement), 116 J.P.N. 520). The salary structure recommended for these officers by the Joint Negotiating Committee covers at least a few thousand officers, including a great number of deputies to the four designated chief officers. There is as yet little evidence as to the way in which these recommendations are being interpreted and applied by employing authorities. It does not appear that any disputes have yet been referred to the Tribunal. These questions, when they arise, will be far more complicated than those with which the Tribunal have been concerned in the recent cases reported in this article. Responsibilities and duties will have to be measured by some other yardstick than the population factor, and the Tribunal may well have to decide whether a particular officer should come under the recommendations of the Joint Negotiating Committee or should remain within the purview of the National Joint Council for Local Authorities' Administrative, Professional, Technical and Clerical Services. These are questions which are at present exercising the minds of many establishment committees in all types of authorities.

1953/54 RATE ESTIMATES

The table below compares the arithmetic average of rates levied in the years 1939/40 and 1952/53 :

	1939/40		1952/53	
	s.	*d.*	*s.*	*d.*
County Boroughs	14	5	21	0
Certain Non-County Boroughs ..	13	5	21	1
Metropolitan Boroughs	13	4	18	4
Certain Urban Districts	15	6	21	0

There are three observations of a general nature which we humbly suggest for consideration as a sort of background to the news now coming in about the estimates for 1953/54, particularly because the news is likely to be unpleasant. We are afraid that our local legislators will be forced again to increase rates, and this unfortunately at a time when Government policy is earnestly seeking means of reducing the slice of the national cake which goes to the tax collector.

The total of local authority revenue expenditure for the year 1950/51 in England and Wales was estimated at £890 million. Of this total £317 million came from Government grants, £289 million from other income and £284 million from rates. Local government, therefore, cost in that year about £6 10*s.* 0*d.* per head of population or 10*s.* 0*d.* per week for a family of four. When national expenditure was added the cost rose to £110 per head of population. The total amounts expended amount to no less than thirty-eight *per cent.* of the national income.

No one would lightly agree in this day and age to the abolition of any existing social service, or even to substantial limitation of the field of activity covered by any one of them. On the other hand there is good ground for the view that the considerable distance forward which has been travelled since 1945 now justifies a halt for a new survey and new plan making before further commitments are undertaken. And there is another point. Within the framework of the existing services he would be a bold man indeed who would argue that all possible administrative economies have been made and that the goal of 100 *per cent.* efficiency has been reached.

T. R. Glover in *The Ancient World* names as chief causes of the fall of the Roman Empire ceaseless heavy taxation and repression of enterprise by great numbers of civil servants. We should not ignore the lessons of history.

In its essentials the structure of local administration has remained unchanged for many years. The heads of all the important departments are almost always technicians and no change in this policy seems likely, although the Hadow Committee, reporting in 1934, declared the technical qualifications of principal officers to be of secondary importance as compared with administrative qualifications, and advised that where it is possible to employ two officials instead of one, the superior post should be given to the administrator. Sir Ernest Simon, a former Lord Mayor of Manchester, was a strong advocate

of the policy of appointing as heads of departments men with special administrative, rather than special technical, efficiency. He said: "Administration by technicians is bound to be extravagant administration." The local authorities obviously do not agree with these views; they have their Finance Committees as watchdogs over expenditure and may feel sufficiently safeguarded thus against extravagance. It is true to say in addition that all lay administrators are not invariably cast in the Gladstonian mould. On the other side of the argument it must be admitted that an enthusiastic technician leagued with a strongly supporting committee is truly formidable: it is the more important then that the council insist that carefully compiled predictions of the financial effect of his actions accompany his technical reports.

The Chief Constable, while perhaps not a technician in the narrow sense of the term as used by the Hadow Committee, is closely akin to his technical colleagues, and we were interested therefore to read of the dispute between the Southend Finance and Watch Committee about the size of police expenditure, which ended in the Watch Committee obtaining approval for its supplementary estimate to cover the cost of filling twelve vacancies in the force. One of our contemporaries says rather tartly: "As the Finance Committee should know, the Chief Constable is accountable only to the Watch Committee, and it is the Watch Committee alone which is charged by law with the duty of maintaining an efficient Police Force." This is perfectly true, but it is also true that a Watch Committee is a committee of the town council and that the police fund in a borough is a branch of the general rate fund. The Finance Committee of a borough is responsible for advising the town council on all financial matters and, with a few exceptions, all payments out of the general rate fund are by law to be made in pursuance of an order of the council. Consequently, in order to advise the council the Finance Committee should be in a position to make inquiries of detail. To say because it does so that "it wishes to have a share in the administration of the Police Force" is no more correct than to say that the Select Committee on Public Accounts, whose investigations are more deeply searching than those of any local finance committee, wishes to share administration of the services whose cost it examines.

Incidentally, we commend the reports of the Committee as examples of the useful and constructive suggestions which a thorough investigation produces. In our view local authority finance committees could adopt the methods of the Select Committee, suitably adapted to their more limited field, with advantage, and we conclude with some examples of subjects which could well be investigated.

1. The proportions in which different types of vehicles are employed in the ambulance service. There are large and small ambulances, sitting case cars, and voluntary drivers with their cars. Are these used to provide the best service at least cost?

2. By virtue of s. 13 (1) of the Children Act, 1948, local authorities are under an obligation to use boarding out as the normal method of providing for children in their care. As it happens this method is also much cheaper than provision in homes maintained by the authority. Have all methods of finding suitable foster parents been employed? Some authorities have been much more successful than others: for example, Bournemouth raised its percentage of children boarded out from twenty-two in February 1949 to eighty-two three years later, but the London County Council increased only from eighteen *per cent.* in 1949 to twenty-four *per cent.* in 1951.

3. Consideration of the various kinds of local authority income would probably be fruitful, particularly comparisons of the cost of the service creating the income at the time when the fee or charge was fixed, and at present.

4. Are some education authorities too lavish in the number of awards to university students? We wonder whether a sufficiently high level of educational attainment is always required before an award is made, and have often thought that it might be a profitable exercise for the authority to have information about the after-university careers of those in its award list.

5. Local authorities are big purchasers of materials. Are they satisfied that their purchasing arrangements are in the hands of experts and that they are getting satisfactory (but not luxurious) articles at the lowest market price?

6. One woman member of the Southend Borough Council opined that the women of the borough would prefer money to be spent on the police for their protection rather than on bandstands and swimming pools. She may be right, but not much police protection can be given by a constable detailed to act as chauffeur to a chief constable, or to work on a simple clerical job which could be done equally well by a civilian.

"HOUSE-TO-HOUSE"

By W. S. A. ROBINSON

In the Notes of the Week at 116 J.P.N. 692, the question of house-to-house collections is raised. House-to-house collections, particularly in some areas, are assuming greater importance inasmuch as this kind of collection from the public is growing, and, whatever may be said to the contrary, many of them are not looked upon very kindly by the public. The House-to-House Collections Act, 1939, has now been in operation for thirteen years. It must be admitted that the Act is a well-intentioned one, dealing with what might have become a serious and troublesome business, by regulating and keeping within bounds house-to-house collections for charitable purposes. If local authorities had greater control with regard to applications, as is suggested, would it be a good thing? Complaints are made, on grounds that may or may not have justification, that collections of this nature are growing continually, and that there are too many of them. If local authorities had more control of them would there not be a tendency for more applications to be granted and thus perhaps increase (shall we say) the inconvenience to a long suffering public. Is it not better for applications such as these to be made, as at present, to the police authority and, if necessary, to strenthen their hands on the question of refusing permission in certain cases? The powers of refusal of licences are only as contained in s. 2 (3) of the Act, and these are very limited as is pointed out in the previous Note of the Week.

A further point that arises is that on ordinary "flag days" where collections are taken in the streets, it is a practice in some areas to distribute collecting boxes in shops, and even, with permission of the proprietors, to collect inside industrial works. If amending legislation should be introduced, is it not advisable that it should be provided that a "house" does not include a place of business as interpreted in the Act of 1939? A shop or a works is not a house. Is it fair then that shopkeepers and business people should be worried and concerned with these collections. In the first place collections are made at people's houses and again at shops and works. Thus many people are pressed and induced to give to the same collection perhaps many times. Does it seem right?

REVIEWS

Lumley's Public Health. Twelfth Edition. Volume III. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. Price: £5 5s. net per volume, £2 15s. net Index.

A further volume of *Lumley* would be an event whatever its contents. But the third volume now published in the twelfth edition (later than some volumes bearing subsequent numbers, for reasons which we explained when noticing the latter) is one of the most important events for some years in legal publishing. With this volume the learned editors have reached the Public Health Act, 1936, and the Housing Act, 1936, the former being the most important statute in the field they are surveying, and the latter not far behind. The relation between these statutes was explained in *Roles* v. *Salisbury Corporation* [1948] W.N. 412, a case which seems not to be elsewhere reported, and in some other well known works is not even mentioned, but is dealt with fully in the present volume. The Public Health Act, 1936, has been greatly affected by the Water Act, 1945, and the National Health Service Act, 1946, while the Housing Act, 1936, has been modified by the Housing Acts, 1948 and 1949. It has for years been increasingly difficult for the practitioner to find his way through the jungle created by some of these amending provisions, and it will be of great help to have the sections thus affected properly annotated as they are in this new *Lumley*. While the notes throughout have been revised, and where necessary recast in the light of subsequent legislation and decisions of the courts, the lay out remains the same as in the first and second volumes respectively of the eleventh edition, where the two Acts mentioned were previously annotated.

Each section is annotated fully, the notes upon the Public Health Act, 1936, being given after the subsections—a point in which *Lumley's* practice is, in this instance, different from that of many textbooks. Moreover, each section receives a preliminary, explanatory note which in substance reproduces what has been said in previous editions, upon corresponding enactments in legislation earlier than 1936. It is to be borne in mind that while the Housing Act, 1936, was pure consolidation the Public Health Act, 1936, comprised both consolidating and amending sections: in fact, readers may be usefully reminded that before the Bill was introduced the earlier public health statutes had been extensively considered by a strong departmental committee, and the Bill for the Act of 1936 was the result of their deliberations. The method followed, of giving a historical note for every section, is, therefore, especially important in dealing with that Act; whenever it seems likely to be useful the learned editors, in addition to their own notes, have included extracts from what was said by the departmental committee.

In addition to the two major Acts of 1936, the present volume contains minor statutes dealing with petroleum, midwives, tithes, and watering places, the last three of which passed into law on the same day as the two major Acts, but happened to be earlier on the list of those put forward for Royal Assent. There are also the Public Health (Drainage of Trade Premises) Act, 1937, and the Hydrogen Cyanide (Fumigation) Act, 1937, which in the eleventh edition came rather inconveniently apart from the Public Health Act, 1936. There is much of the Livestock Industry Act, 1937, and the Factories Act, 1937; the whole of the Local Government Superannuation Act, 1937, and some others of that year. It is evidence of the activity of Parliament at that period that the public health and related statutes of two years alone can fill a substantial volume like the present, but, for good or evil, there has been quite a spate of post-war legislation also, impinging on the pre-war Acts, sometimes in major points, as with the Housing Act, 1949, but more often in a series of minor details. The Public Health Act, 1936, and the Housing Act, 1936, have also given rise to a good deal of case law; there are, for example, the cases upon the relation of work required under the latter Act to the property of adjoining owners, upon which at one time there was a good deal of difference of opinion. It is thus essential to have the pre-war Acts properly noted up, as is done in the present volume.

The Local Government Superannuation Act, 1937, has not often been before the courts, because questions thereunder are ordinarily determined by a Minister, now the Minister of Housing and Local Government, but all that a commentator can say of it will be found here; there has been a good deal of legislation affecting its provisions. It is too soon as yet to be sure how some of the provisions of the Public Health Act, 1936, which have been passed upon by the courts (either since that Act was enacted or in their earlier shape in previous Acts) will be affected by the fundamental change in the law which was made by the Town and Country Planning (Interim Development) Act, 1943; the learned editors of the present work have wisely not ventured into the field of prophecy in this connexion, though one point where the present Town and Country Planning Act, that of 1947, impinges upon the former law is duly noticed at p. 2429. Until the courts have an opportunity to consider the relation of the novel principle of the Act of 1943, as now embodied in the Act of 1947, to the principles settled earlier by a line of judicial decisions upon the approval of plans by local authorities, it is certainly desirable for local authorities and their advisers to assume that the earlier case law upon such sections as s. 64 of the Public Health Act, 1936, remains operative except where there is an explicit new power of using discretion against the private person. The very valuable notes upon this group of sections seem to have remained substantially unaltered, except for some new cases and the formal changes necessitated by transfer of powers from one Minister to another in recent years: to say this is in no way depreciatory—we have long regarded these notes as one of the most complete and valuable expositions of a tiresome subject to be found in any text book.

As has been said above, the provisions in the Public Health Act, 1936, relating to water supplies are among those which have been most obviously affected by later legislation. The Water Act, 1945, came into Vol. V of *Lumley's* eleventh edition, and will come into the present edition in its proper place. Meantime, Part IV of the Public Health Act, 1936, is noted up to show these changes, and also the transfers of jurisdiction which have been effected since the Act of 1945. Development of land, so far as it has been possible since the war, and to the extent that it may in future go ahead more quickly, inevitably means a call for water supplies, and fresh problems for supply authorities and property owners in regard to water: it is, therefore, helpful to have this further instalment of annotated legislation on the subject, while the Rivers Pollution Prevention Act, 1951, here noticed, may have wider repercussions upon the sewerage law embodied in the Act of 1936. Recent cases in the High Court have called fresh attention to the problems of pollution. The Public Health (Drainage of Trade Premises) Act, 1937, is always apt to be a source of difficulty, as our Practical Points show from time to time, and the annotation in this volume will be useful, as also the notes upon the Act of 1951, and the affect of that Act upon the Public Health Act, 1936. It is to be hoped that the recent cases will lead to increased vigilance, both against the enemy without and the enemy within the fold of local government, and in the exercise of that vigilance *Lumley* has a part to play.

The general layout of *Lumley* is so well known, to every reader concerned with local government and public health, that it would be superfluous to say much about it here, but it is worth while to mention the practice which has been followed, as in successive earlier editions, of giving full notes with extracts from the judgments instead of merely referring readers to the law reports. *Lumley* is, in this way, one of the most complete as well as one of the most reliable textbooks in existence: one of those, that is to say, which can most readily be used alone, without reference to libraries, while the policy of keeping old authorities as well as inserting new ones (of course with proper annotation), although it makes (admittedly) for bulk, does ensure that a lawyer who knows his *Lumley* knows pretty well everything about local government and the legal side of public health in the widest aspect of the term.

Handbook on Joint Stock Companies (Gore-Browne). By P. J. Sykes, L. J. Morris Smith, Oliver Smith, and Stanley Borrie. London: Jordan & Sons, Ltd. Price 63s. net.

We remarked at the time of its passing on the bulk of the Companies Act, 1948. It is as near as any Act upon the statute book to being a complete code in itself, for the subject with which it deals, and it is the passing of that Act which necessitates the present new edition of *Gore-Browne*. Every office has its own preference in the choice of textbooks; to say that there is a rival publication which we ourselves prefer is no detriment to the value of *Gore-Browne*, and the fact that this is the forty-first edition since Sir Francis Gore-Browne, Q.C., originated the book in 1866 is solid proof of the value attached to it, both by solicitors and by registration agents. The fact that it is published by Messrs. Jordan, who are specialists in company matters, is a further indication that it has for generations been valued by those for whom it is intended. The arrangement of this, as of previous editions, is not according to the order of sections in the Act but according to the subject matter. It begins with the formation and constitution of a company, and continues with its carrying on business; with the law relating to shares, and the law relating to company management and winding-up. Formation and constitution fall into a number of sub-headings, such as the memorandum; the articles; the books and seal, and so forth. The law about prospectuses is carefully explained, with a useful discursus upon stock exchanges and dealings in shares. The part of the book dealing with shares and transfers is comparatively brief, but seems adequately to state the law—though it is at first sight a little curious to find that the conversion of

shares into stock, and the reverse process, both of which constantly occur in practice, are separated in the book by a distance of some three hundred pages from the subject of creating shares. Possibly a practitioner who is regularly dealing with company matters would be less embarrassed by this divorce of topics than we thought, upon first perusal of the book.

Between these matters comes the greater part of book II, setting out the law about management and conduct of the business of a company. Here again, we found it a little curious that the declaration of a dividend (which is the process of most interest to the shareholder) is tucked away as a sub-heading in a long section on accounts. This may be logical, but it does not strike us as dealing with the matter in the order, or giving the relative degree of importance, which the average reader would expect.

Winding-up and liquidation are very fully dealt with, with particular reference to the appointment and functions of the liquidator, though we should have liked (from our own local government point of view) a little more about the priority for rates. These criticisms are, however, upon relatively minor points, about a book which has so well stood the test of time, and is so well known in the circles for which it is primarily designed. A curious appearance is (to our eyes) given to the page by printing the case references in ordinary type, and by the use of reference numbers running from one at the beginning of a chapter or section up to some hundreds, instead of the more conventional italic letters of the alphabet. This is, however, a very minor matter, of no practical importance. It is of rather more importance that, for almost every decided case, only a single law report is cited, but the inconvenience of this (to which we have so often referred in other book reviews) is balanced by a merit sometimes absent—namely that the selected report is provided with a reference both in the footnote to the page and in the table of cases at the beginning of the book. As a whole this workmanlike and reliable new edition of a standard work will ensure its retaining the affections of those accustomed to it.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 108.

SECTION 4 VAGRANCY ACT, 1824—" SUSPECTED PERSON "

A case with two features of unusual interest was heard by justices sitting at Dudley Magistrates' Court this autumn. A sixty-one year old woman appeared to answer a charge that she, being a suspected person, loitered in a public place with intent to commit a felony on September 2, 1952, contrary to s. 4 of the Vagrancy Act, 1824.

The matter first came before the justices on September 19, when the defendant pleaded not guilty, and was represented by Mr. J. J. B. Dutfield, LL.B., solicitor, of Dudley, to whom the writer is greatly indebted for information in regard to this case. The prosecution was in the hands of Mr. C. W. Johnson, the chief constable, to whom the writer is also greatly indebted for information.

A policewoman was called for the prosecution, and gave evidence as to incidents which she had seen on July 15 when, dressed in plain clothes, she was in the market place at Dudley, and saw the defendant loitering amongst the shoppers. She was seen standing behind a crowd of women and to be looking at their shopping bags as if to ascertain the contents. At one time she was actually seen by the witness with her hand inside a shopping bag in which a purse had been placed. Defendant was not arrested on this occasion, but was kept under observation for about fifteen minutes during which time she was seen to walk round the market stalls acting in the manner described above. Defendant was also seen on this occasion to stand in a bus queue, but she failed to board the bus when it arrived.

The policewoman then went on to speak of incidents which happened on the day referred to in the charge, *viz.* : September 2. The evidence upon this occasion was of a similar character and defendant was seen to put her hand in one woman's shopping bag and to unfasten the handbag of another woman. Nothing was taken by defendant on either July 15 or September 2.

The court at this stage adjourned for lunch, and after the adjournment, Mr. Dutfield objected to the admissibility of the evidence relating to the earlier date on the ground that forty-nine days had lapsed between the date of the first incident and the date of the second. The court retired to consider the submission, and on returning to court, the chairman stated that the bench upheld the submission and offered the defence an adjournment, so that the case might be tried by a fresh bench, as the court might well feel themselves prejudiced by what they had already heard. The offer was accepted, and at the adjourned hearing on October 1, the bench was differently constituted, and the chief constable was represented.

The prosecutor stated that he intended to introduce certain evidence which had already been heard by the previous bench, and in his view wrongly rejected. Mr. Dutfield objected to this evidence being tendered at all upon the ground that the matter was *res judicata* and that, if the justices then sitting heard the evidence which had been rejected by the first court, they would vitiate the proceedings. Mr. Dutfield also pointed out that if the evidence to which he objected was tendered and heard and then objected to, in the event of the objection being upheld, a further adjournment would be necessary to allow yet another bench to be constituted to hear the case, thus making a farce of the proceedings. The prosecutor submitted that the first bench were wrong in upholding the submission that the evidence was inadmissible, that they were also wrong in not hearing the remainder of the case, and that it was contrary to natural justice that the prosecution should not now be allowed to tender all their evidence again, and he submitted that the previous proceedings should be totally disregarded. After Mr. Dutfield had replied, the court came to the conclusion that the matter had not been finally disposed of by the first bench, and it was open to them to consider *de novo* the admissibility of the evidence to which objection had been taken earlier.

Evidence of the incidents on July 15 was tendered and was objected to by the defence on a number of grounds. It was urged that it was unfair and prejudicial to the defendant in that at the time of the earlier incident she was given no opportunity of correcting the suspicions in the mind of the police officer, and further that the events complained of took place forty-nine days before the first trial and, by virtue of the lapse of time, the defendant found it difficult, if not impossible, to prepare a proper defence in regard to the allegations made against her. The defence further alleged that the evidence was irrelevant and quoted in support *Ledwith* v. *Roberts* (1937) 101 J.P. 23, *Pyburn* v. *Hudson* (1950) 114 J.P. 287, *Hartley* v. *Ellnor* (1917) 81 J.P. 201, *Rawlings* v. *Smith* (1938) 102 J.P. 181, *Cohen* v. *Black* [1942] 2 All E.R. 299 and *R.* v. *Clarke* (1950) 114 J.P. 192.

The defence also submitted that evidence of other acts which tend to show that the defendant has committed other offences can only be admitted to show system, fraud, intent, design, etc. The state of mind of the constable affecting the arrest of the defendant was the relevant factor, said Mr. Dutfield, and not the state of mind of the defendant. Finally, the defence submitted that the operation of s. 4 of the Vagrancy Act, 1824, was to be limited, and pointed out that unless the matter was construed reasonably, a case might arise where a man committed an act not necessarily done with any wrongful intent but which gave rise to suspicion in the mind of a police constable observing it. Twelve months later the man might commit a similar act and be arrested by the same constable for an offence under the section. This, submitted the defence, would be a gross interference with the liberty of the subject.

The prosecutor relied upon *R.* v. *Fairbairn* [1949] 2 K.B. 690, and after a lengthy retirement, the justices decided to admit the evidence as to the conduct of the defendant on July 15. The police witness detailed this and then spoke as to the defendant's conduct on September 2. The court decided to convict and fined the defendant £10 and gave her eight weeks in which to pay.

COMMENT

The features of unusual interest to which the writer referred at the commencement of this report are, first, the action of the first court in offering the defence an adjournment after upholding the submission that the evidence of what occurred on July 2 was inadmissible so as to enable a fresh court to be constituted and, secondly, the submission of the defence that an incident occurring forty-nine days before the day on which the alleged offence was committed was too remote in point of time to be able to be relied upon by the prosecution to show that the defendant was, upon the latter date, already in the category of a " suspected person."

Although the offer made by the first court can well be understood, the writer is strongly of the opinion that the defence should not have accepted such offer but should have required the prosecution to conclude its case and then have submitted that there was no case to answer, inasmuch as there was no admissible evidence before the court that the defendant was, on September 2, a suspected person. If this course had been taken it is reasonable to suppose that the submission would have been upheld and the defendant acquitted. It would appear that none of the subsequent difficulties which arose would have occurred had

Mr. Dutfield objected to evidence being given as to what had occurred on July 15, as soon as such evidence was opened by the prosecution.

The writer thinks that, although the case was formally " adjourned " by the first court, the proceedings before the second court were in fact a re-hearing and that, in such circumstances, the second court was justified in considering *de novo* the arguments for and against admitting evidence as to what occurred on July 15.

As to the second feature of interest, *viz.* : whether evidence could be given of what occurred forty-nine days before the date of the alleged offence to show that the defendant was, by the latter date, a " suspected person," the writer has been unable to find any decision bearing directly upon the question, but it is clear from many of the cases that the courts lean to the view that little is required by way of evidence to satisfy the court that an alleged offender is a " suspected person." For example, in *Hartley* v. *Ellnor*, *supra*, the actions of a defendant for a period of forty minutes prior to his arrest were held by the Divisional Court to be sufficient to bring him within the category of a " suspected person."

In *R.* v. *Clarke*, *supra*, a defendant was watched by police officers in November, 1949, and the fact that he had convictions in 1942 and July, 1948, was unknown to them at the time. The defendant was arrested by the police on a charge of having in his possession an imitation firearm when committing an offence referred to in the third schedule of the Firearms Act, 1937, *viz.* : being a suspected person loitering in a street with intent to commit a felony. The Court of Criminal Appeal had no difficulty in deciding that, in the circumstances set out above, the defendant was correctly convicted despite the fact that the police did not know at the material time that he was a person with previous convictions.

R.L.H.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

An announcement that the Government were considering the introduction of legislation concerning the possession of offensive weapons was made in the Commons by the Secretary of State for the Home Department just before the House rose for the Christmas Recess.

Replying to Mr. Chuter Ede, Sir David Maxwell Fyfe said that the use of offensive weapons in connexion with crimes of violence had given rise to legitimate anxiety. Concern had also been expressed at the offer for sale to children of toy imitations of certain types of weapon. The Government had given careful consideration to both those problems.

On the first point, it would be recognized that there were many instruments which might be used as weapons for criminal purposes. Apart from lethal firearms and imitation firearms, which were already dealt with by the provisions of the Firearms Act, 1937, those instruments included genuine weapons such as life preservers, stilettos and knuckledusters ; home-made instruments such as wooden bludgeons with razor blades inserted in them ; and articles in day-to-day use for legitimate purposes, such as bicycle chains, knives, scissors and bottles.

Under the law as it stood, the mere possession of such an article in a public place was not an offence, however suspicious the circumstances, except at a public meeting or on the occasion of a public procession. It was important that Parliament should exercise extreme care before approving legislation which created new criminal offences ; but Her Majesty's Government thought that in present conditions, when there was so much anxiety about crimes of violence, it would not be right to overlook the deterrent effect on criminals which would be achieved if it were made an offence to be found in possession of an offensive weapon, without lawful reason, in a public place or a place to which the public had access. The Government were at present examining the possibility of introducing legislation to achieve that object.

The sale to children of toy imitations of real weapons, such as the notorious rubber cosh, raised problems of a different character. Apprehension as to the effect of certain of those toys on the minds of children was no doubt well founded, and the Government were glad to see that the responsible trade associations took prompt action to advise retailers to exercise a proper discrimination between the traditional toys, such as tomahawks, bows and arrows, policeman's truncheons and harmless pistols, and the toys which represented weapons used by contemporary criminals.

In November, the National Chamber of Trade and the National Association of Toy Retailers gave advice to their members which could not be bettered. His information was that that advice had found a ready response from reputable retailers, and that in many shops the articles complained of had been withdrawn from sale. The Government trusted that any retailers who had so far been slow to act on that advice would recognize that it had behind it the full support of responsible public opinion throughout the country.

The mischief had, therefore, already been diminished ; and, in any event, the Government did not think that it was a problem which could appropriately be dealt with by restrictive legislation. In the first place, if legislation were introduced with a view to banning the sale of certain toys altogether or with a view to banning the sale of certain articles to young persons, it would not be possible to define the articles which were to be banned without at the same time covering many articles to which no one objected.

In the second place, the Government were reluctant to propose that Parliament should act as a censor of toys. It seemed to them that it was for parents to decide what toys were suitable for their children. The information which they had suggested that the particular problem was not of great proportions, and in the view of the Government it was one which should be left to the good sense of traders and, above all, of parents.

INQUIRY COMMITTEES

In written Parliamentary answers, the Secretary of State for the Home Department announces the setting up of two Departmental Committees of Inquiry.

The first, under the Chairmanship of Sir Alexander Maxwell, is to inquire " into the need, in order to relieve pressure on courts of assize and quarter sessions, for the establishment in South Lancashire of a court on the lines of the Central Criminal Court ; and, if satisfied that the need for such a court exists, to consider and to report upon its composition, the nature of its jurisdiction, the areas (whether within or outside Lancashire) from which persons might be committed thereto, its place or places of sitting, the staff required for the proper functioning of the court, and how the cost of providing, maintaining and operating the court should be met."

The second committee, under Lord Tucker, is to consider the question of retrials for convicted persons. Its terms of reference are : " To consider whether the Court of Criminal Appeal and the House of Lords should be empowered to order a new trial of a convicted person who has appealed to the Court of Criminal Appeal, or whose case has been referred to the Court by the Secretary of State, and, if so, in what circumstances and subject to what safeguards."

MAGISTERIAL MAXIMS III

A certain Clerk to Justices, who was Engaged as such in a Part Time Capacity only, was wont to take his Duties less Seriously than they warranted, looking upon his Responsible Position as a Rather Second Rate Ornament in the Bright Diadem of his Lucrative and Old Established private Practice.

Indeed, the WHOLE BURDEN of the work of Magisterial Business, fell upon the shoulders of his Assistant—a Worthy Man, and Loyal—who to the Credit of the Principal was remunerated by a Substantial Salary. The Clerk himself was content merely to Attend Court at weekly intervals (being always Well Primed beforehand by the Assistant on matters likely to Arise) but on the question of Drafting Informations, Completing Returns, Perusing the ever-incoming Mass of Circulars, Rules, and Orders, seeing would-be litigants, and in fact Performing all the Thousand and One other Tasks so Menial and yet so Necessary to the proper Dispatch of Summary Jurisdiction, he was woefully Ignorant.

All went Well for Some Years, but on an Evil Day, the Assistant was Fatally Injured in a Road Accident. As a result, Magisterial Business in that particular Petty Sessional Division was brought to a Sudden and Ignominious halt, for the Clerk knew not Where to Begin, nor What to Do.

Inquiries frantic, and Advertisements tempting failed to Provide him with a competent Successor to the Deceased, and as a Result, he was Compelled to Resign his Office.

Ultimately, though after much Woeful Inconvenience to the Public, his Division was merged with one Adjacent thereto.

With bitterness, the Erstwhile Clerk reflected that an Appointment which, when held by Himself seemed but a Weekly Nuisance, when Irretrievably Lost, appeared Most Desirable.

In later life he realised the Truth of the Maxim, " *Decorum est Sciento*," or in the translation " Ignorance is Not Bliss for Ever." For as the Chinese had it, Many Thousands of Years earlier : " Though it is Wise, when in a Strange Country, to engage the Services of a Faithful Guide, yet when one Lives there, it is far More Prudent to Know the Road oneself."

AESOP II.

ADDITIONS TO COMMISSIONS

WEST RIDING

Sir John Leighton Barren, Brook House, Sawley, Ripon.
John William Gallaudet Birkbeck, Hicklam House, Aberford, Leeds.
David Bertram Bradbury, 32, Grantham Street, Rossington.
Mrs. Dora Cichowski, 83, Blyth Road, Maltby, nr. Rotherham.
Henry Clixby, Park Drive, Stocksbridge.
Alexander Claude Crowther, Savage Garth, Nun Monkton, York.
Mrs. Phoebe Mary David, Kirk Smeaton, nr. Pontefract.
Milner Day, 27, Hopton Avenue, Upper Hopton, Mirfield.
Colin Dews, 34, Glebe Street, Castleford.
Arthur Reginald Finch, Quendale, New Road Side, Rawdon, nr. Leeds.
Mrs. Dorothy Greenald, 117, Church Road, Hartshead, Liversedge.
Mrs. Mary Annie Greenwood, Swarcliffe Hall, Birstwith, nr. Harrogate.
George Guest, 6, Walton Road, Upton, nr. Pontefract.
Sidney Cochrane Hacking, Kingsland, Cemetery Road, Mexborough.
Peter Littlewood Hainsworth, Lyndhurst, New Street, Farsley, nr. Leeds.
John Albert Hallowell, Lynton, Crowtrees Lane, Brighouse.
Mrs. Lily Hatter, 1, St. John's Road, Edlington, Doncaster.
Mrs. Annie Haigh Holmes, 78, Broadgate Walk, Horsforth.
James Edward Howe, 38, Moor House Avenue, Stanley, nr. Wakefield.
Fred Hymas, 29, Halfpenny Lane, Knaresborough.
Major Sir Joslan William Vivian Ingilby, Bart., Ripley Castle, Harrogate.
Thomas Clayton Kettlewell, Little Orchard, Hook, nr. Goole.
Mrs. Agnes Kitching, 7, Priesthorpe Road, Farsley, nr. Leeds.
Mrs. Edna Beatrice Marsden, Bullhouse Hall, nr. Penistone.
Mrs. Margery Kathleen Ainley Nicholson, Ashfield, Oldfield Road, Stannington, Sheffield.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, December 16

MERCHANDISE MARKS BILL, read 1a.
EXPIRING LAWS CONTINUANCE BILL, read 3a.

HOUSE OF COMMONS

Monday, December 15

WHITE FISH AND HERRING INDUSTRIES, read 1a.

Tuesday, December 16

ACCOMMODATION AGENCIES BILL, read 1a.

PERSONALIA

RETIREMENT

Miss B. M. Fairs, probation officer for fifteen years in the Mid. and North Buckinghamshire, is retiring. She is succeeded by Miss E. E. N. Williams of Merthyr Tydfil.

OBITUARY

Sir Granville Ram, K.C.B., Q.C., died in London on December 23. Born in 1885, he was educated at Eton and Exeter College, Oxford, and was called to the Bar by the Inner Temple in 1910. He had been First Parliamentary Counsel to the Treasury from 1937 to 1947. An appreciation will be made in our next edition.

The Right Hon. Sir Paul Laurence died in London on December 26, at the age of ninety-one. Educated at Malvern College and abroad, he was called to the Bar by Lincoln's Inn and took silk in 1896. He was a Judge of the Chancery Division from 1918 to 1926 and a Lord Justice of Appeal from 1926 to 1934.

RENT REBATES — WHOSE RESPONSIBILITY?

The drastic decline in the value of money in recent years has created paradoxes in plenty before now, but our attention has recently been drawn to one strange result, which may have far-reaching consequences in the sphere of housing management. What has happened is that a county district council in the normal course of administering its estates wish to effect the transfer of the sole occupant of a three-bedroomed pre-war house to a small, newly completed bungalow more suited to her present needs, but which, because of current high building costs, is at a higher rent than the house. The person in question is already receiving national assistance, but the National Assistance Board, on being approached, have shown themselves unwilling to increase the allowance up to the amount of the new rent or to pay the cost of removal from house to bungalow.

These circumstances, which may conceivably be oft-repeated in the control of the vast numbers of council houses throughout the country, throw into sharp relief principles of the greatest importance, necessitating consideration of the distinctive functions of two great organs of modern society, and it may well be that the time has come for a clear understanding to be reached on the limits of responsibility of housing authorities and the Board.

The main function of a county district council under the Housing Acts, 1936-1952, is, broadly speaking, the provision of accommodation according to the needs of their district, an inevitable corollary to which is that the best use be made of such houses as are in fact erected. If one thing in the field of local authority housing administration is beyond dispute, it is the paramount necessity for the utmost economy in the provision of accommodation and in the consumption of land, and one of the best ways of achieving this is by the methodical re-distribution of tenancies in accordance with the normal variations of family circumstances over the years, so that at all times the maximum use is made of available accommodation as far as is reasonably practicable. This highly desirable state of affairs can only be attained by means of a constantly-applied system of tenancy-exchange and it is at these times, particularly when dealing with the elderly and infirm, that the housing authority find themselves impinging on the province of the Board. The situation mentioned at the outset will not be as rarely encountered as might at first be thought, and in any case, even when rent relief is not sought, it is no uncommon thing for necessitous tenants to ask for all or part of their removal expenses to be paid.

It is true that housing authorities are enabled under s. 85 (5) of the Housing Act, 1936, to grant such rent rebates as they think fit, and that the Ministry have intimated their view that the cost of removals might be met by local authorities under s. 129 (1) (iii), but these are merely permissive powers, not obligatory, which, moreover, should be viewed against the background of the year of enactment, when account had to be taken of the great numbers of people whose incomes were so low as to render them unlikely ever to be able to pay even the subsidized rents of that period. At that time, too, little distinction in

principle would have been drawn between the two alternative forms of relief which were both derived from local rates, with the result that housing authorities would hardly have felt themselves impelled to exercise their minds as to the actual authority which in strict propriety should bear this responsibility.

Things are very different today. The working classes, who, despite the statutory disclaimers of the 1949 Act, still and always will form the bulk of council house tenants, enjoy the benefits of full employment, negotiated wage rates and family allowances, all of which factors must postulate the theory that the average tenant can reasonably be expected to afford the normal subsidized rent—a contention which if it needs further endorsement, will find it in the token 2*s.* 6*d.* weekly rent reduction usually granted to the somewhat lower-paid agricultural worker.

The unduly ill-rewarded section of the community of the pre-war period has therefore gone, for ever, it is to be hoped, and for that reason housing authorities in discharging the essential duty of adjusting tenancies as domestic needs change, can expect to find applications for financial assistance mainly from persons whose incomes are inadequate through age or ill-health, either of which contingency might fairly be said to fall within the province of the National Assistance Board.

Here it would perhaps be well to establish the statutory position of the Board in relation to the circumstances under consideration, when it will be found, in seeming recognition of the changed social conditions to which reference has been made, that the National Assistance Act of 1948, by s. 4, has expressly and categorically imposed upon the Board the duty to " assist persons in Great Britain who are without resources to meet their requirements, or whose resources (including benefits receivable under the National Insurance Act, 1946) must be supplemented in order to meet their requirements—which is precisely the situation confronting the county district council. In the National Assistance (Determination of Need) Regulations, 1948, made under the Act, specific provision is made in the schedule, Part I, para. 4, for rent, in that it says : " 4. (1) A weekly sum in respect of requirements for rent shall be allowed as follows, that is to say : (*a*) where the applicant, or his wife or her husband, is a householder, or where the applicant is living alone, the net rent payable, or such a part thereof as is reasonable having regard to the general level of rents in the locality." It is also interesting to note that in the Explanatory Leaflet A.L.18 issued by the Board, it is stated that the allowance for rent where an applicant is living alone, is usually the net amount he pays, unless that amount is " substantial " when the actual amount is decided in the light of recommendations made by the local Advisory Committee for the Area set up under the Act. It is difficult to see how it could be claimed that the heavily subsidized net rent of a small bungalow could ever be regarded as " substantial " within the meaning of the Regulation in which case it would seem that the net amount should always be allowable. Article 6 of the Regulations, in stating " An assistance grant of such a sum as is reasonable having regard to all the circumstances of the case may be made, by way of a single payment, to meet an exceptional need for assistance of an applicant " seems neatly to cover the question of removal costs.

Academic legal obligation is, of course, one thing, but local authorities are perforce as much if not more concerned with the practical exercise of their duties. Here, too, it would appear that the bias lies heavily towards the Board's acceptance of responsibility in cases of this kind, and, of course, where need arises independently of tenancy transfers. After all, the Board must of necessity possess and operate the day-to-day machinery of relief ; their area officers, within regulations, have discretion to decide amounts required, unlike the local authority officer who must refer to a committee which may not meet too frequently, and week-by-week variations must be the commonplace of the Board's administration. Again, the very fact that the old, local, poor law has by deliberate legislative act been superseded by the nationally based assistance—only one of the aids, services and interventions of the Welfare State—has at once caused national assistance to be regarded as a right, removed the old stigma of poor relief and done away with the reluctance which the distressed but self-respecting person so often used to feel in seeking help from the Relieving Officer.

Nothing, then, should be allowed to stand in the way of the most prudent and economical use of local authority accommodation, and tenancy exchanges to accord with changing circumstances should be the constant care of every housing committee. It seems only right, therefore, within the spirit and the letter of modern welfare legislation, that the functions of housing and relief should be clearly defined and that at the highest level there should be agreed a recognized and clear-cut administrative arrangement whereby housing authorities can make their tenancy adjustments without difficulty and delay and in the sure knowledge that the National Assistance Board will in turn shoulder their responsibility for any consequential relief needs.

AGRICOLA.

[*Articles by* A.L.P. *will be resumed shortly*]

LAUGHTER IN COURT

A COLLECTION BY RODERICK WILKINSON

Mr. T. E. Rhys Roberts (defending) said that the accused's story was quite simple. He had missed his bus in Brecon and took this one, which happened to be handy.

Mr. Roberts said the accused was perfectly honest except where it came to taking large mechanical vehicles.

(*The Brecon and Radnor Express.*)

A man was charged with creating something of a disturbance, and a witness, asked about it, said : " He was using abusive and obscene language, calling people Conservatives and all that." (*The Evening Chronicle, Newcastle.*)

A man who was found sitting in a paddle boat in the middle of Hove Lagoon, shouting " Whoopee " at 5.35 in the morning, was fined £15 at Hove today for being in charge of a car while under the influence of drink. (*The Evening Argus.*)

He was found dead at his house. His will, issued today, showed that he died without making a will. (*The Star, London.*)

She was stated to have five previous convictions for the same offence. (*The Barnsley Chronicle.*)

" It is very difficult to deal with you girls and, in fact, you are a menace to the neighbourhood," said Mr. J. Mackinson, presiding at Newton-le-Willows sessions, today, when remanding two seventy-nine-year-old girls in custody. (*The Liverpool Echo.*)

Mr. Basil Wijeyekoon, appearing for the wife, said the accused was now threatening to murder his father-in-law and other members of his family on his return from jail.

Inspector Jones said there was nothing in the man's behaviour to indicate an unsound mind. (*The Times of Ceylon.*)

" He must have been drunk because he proposed to a policewoman on his way to the station," said Supt. Jones.

(*Stratford-on-Avon Herald.*)

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Building Materials and Housing Act, 1945—*Civil building licence—Ex post facto condition.*

On March 20, 1951, a client of ours was granted a licence under the Defence (General) Regulations, 1939, reg. 56A, to build a house and garage at a total cost not exceeding £2,350. The licence contained no condition or reference to the selling price. The house was erected, and our client has been living in it for some time. On June 5, 1952, some fifteen months after the grant of the licence, he received a letter from the local council which read as follows :

"I have to inform you that the above named licence must now have the following condition attached : 'That this house and garage shall not be sold for more than £2,500.'"

Will you be good enough to inform us if the council have any, and, if so, what power to impose a condition on a licence some fifteen months after it has been issued. PUCK.

Answer.

Section 7 of the Building Materials and Housing Act, 1945, plainly contemplates that the condition will have been imposed when the licence under the Defence Regulations was granted. In our opinion, the purported imposition of such a condition after the licence has been acted on is void and of no effect.

2.—Burial—*Closed Churchyard—Maintenance where no Order in Council.*

A burial ground attached to a parish church in this district has been disused since 1938 because there are no available grave spaces and the existing graves are full. No Order in Council has been made under s. 18 of the Burial Act, 1855, for the discontinuance of burials therein, nor has any certificate been given by the churchwardens to the council under that section for the repayment of any expenses of maintenance or repair. My council, which is also the burial board, have been asked by the parochial church council to exercise their powers under the Open Spaces Act, 1906, to take over the burial ground for the purpose of converting it into a garden of rest. As the burial ground is adjacent to council owned gardens my council cannot agree to the request.

Will you please advise

1. Whether there is any liability on the urban district council for (*a*) repairing and maintaining the walls and other fences (*b*) the maintenance of the grave yard ?

2. Must an Order in Council be made under s. 18 of the Burial Act, 1855, before the parochial church council may give a certificate for the repayment of expenses of maintaining or repairing a closed churchyard ?

3. Whether the urban district council, as burial authority, can be compelled to take over the disused burial ground and, if so, under what Act ? PARO.

Answer.

1. Not until an Order in Council is made under the Burial Act, 1855, and a certificate is given under s. 18 of that Act, when the liability under s. 269 (2) of the Local Government Act, 1933, will arise.

2. Yes.

3. No.

3.—Children and Young Persons—*Children Act*, 1948—*Children in care of local authority—Maintenance—Effect of order of divorce court.*

The following case has recently arisen in this county, and I should be greatly obliged for any observations and advice you can offer which will lead to its solution. The case concerns contribution orders. The facts are :

1. The parents of two children are divorced.

2. When the decree *nisi* was made the custody of the children was given to the mother, but the care and control was given to the maternal grandmother with whom the children live.

3. Six months after decree *nisi* an order of the Divorce Court by the registrar in chambers was made whereby the father was ordered to pay *x* shillings and *y* shillings to the mother for each child respectively.

4. Three years later the maternal grandmother intervened (on a legal aid certificate) in the High Court, and the original maintenance order was varied so that the payments were payable to the maternal grandmother by the father.

5. Both parents have re-married and live in this county.

6. The father has never paid anything to the maternal grandmother under the order.

7. The maternal grandmother for reasons of expense will not take steps to enforce the maintenance order.

8. Both children were taken into the care of the county council under s. 1 of the Children Act, 1948, whilst the proceedings varying the maintenance order (in 4 above) were before the High Court. The children were boarded out with the maternal grandmother to whom the county council pays an allowance.

The question is : How can the county council obtain the benefit of the maintenance order made by the High Court ?

These three alternatives have been considered :

(*a*) That the county council should apply to the court of summary jurisdiction for a contribution order against the father.

(*b*) That the maternal grandmother should inform the High Court that she can no longer be responsible for the children, and leave the mother to apply for the variation of the maintenance order in favour of the county council.

(*c*) That the county council should assume guardianship of the children under s. 2 of the Children Act, 1948, and apply to the High Court to intervene in the divorce proceedings and obtain a variation of the maintenance order in their favour.

There are, however, certain disadvantages in all three methods. The first alternative cannot be acted upon because in my submission the magistrates' court would have no jurisdiction. The second alternative cannot be adopted as the mother cannot be made to apply for the variation of the order. The third alternative requires the county council to show *inter alia* that the children are in need of protection, and they never assume guardianship unless the children are in moral danger, etc. This fact is known to the public generally, and if such a step were taken by the county council it could be construed as a slight on the maternal grandmother.

Finally, there is considerable doubt whether the county council could intervene in the divorce proceedings as they would not be "guardians under an order of the court" which is required by r. 43 (*c*) of the Matrimonial Causes Rules, 1950. SEY.

Answer.

We take it that our learned correspondent is against taking course (*a*) on the ground that a magistrates' court should not deal with matters that have been before the High Court. We are always against action by magistrates where there is a danger of this, but in the present case it might be said that the question of maintenance, as between the local authority and the father, has not been before the High Court, and that the local authority is entitled to apply for contribution orders. If the father of the children satisfied the magistrates' court that he was complying with the High Court Order, the magistrates would be well advised to make no order, but that is not the position.

If, however, the local authority does not care to take this course, we suggest that it should apply to the Divorce Court for leave to intervene. The facts would then be before that court, and if that court considered it more appropriate that application should be made to a magistrates' court, the latter would be completely free to act.

4.—Husband and Wife—*Maintenance Orders (Facilities for Enforcement) Act*, 1920—*Order made in England confirmed abroad—Both parties now in England.*

I should be obliged to receive your opinion on the following :

Order for maintenance obtained by wife in England, confirmed in Bombay where husband living. Husband comes back to England, applies to justices who made the original order for variation of it—wife opposes, order made varying order—this is, according to the law of no effect until confirmed by the Bombay court. This cannot be done as the husband and wife no longer in India but in England. What can be done ? Should the wife apply to discharge the original order and varying order and make a new application in England ? SUB.

Answer.

It seems useless to make a provisional varying order when both parties are now in this country, and the best course seems to be for the wife to apply for a fresh order, assuming that she has a ground for so applying. If it is a case of desertion or neglect to maintain, and the husband is still alleged to be continuing in a state of desertion or to be still wilfully neglecting to maintain his wife there would appear to be no difficulty about entertaining the application.

5.—Larceny—*Building materials—Tenant of council house taking and using materials intended for repair of other houses.*

Building materials were deposited by a local authority repair organization on land adjacent to houses owned by the local authority for whose repair they were intended. The materials were removed by the tenant of a council house, other than those intended to be repaired,

and used for concreting around the outside of the house without consent. Is the offence larceny, or, if not, has any other offence been committed? STAL.

Answer.

We dealt with a similar question at 114 J.P.N. 440. We think that there is ground for preferring a charge of larceny, subject to the justices being satisfied by the circumstances that there was a fraudulent intention in this case. This may depend partly on the time and manner of the taking.

6.—Licensing—*Fees—Extension of hours in respect of music and dancing—Consent to structural alteration of licensed premises.*

A question has arisen with the county auditor as to appropriate fees to be charged in the following instances:

(*a*) On an application for an extension of hours in respect of a music and dancing licence. The justices grant music and dancing licences under s. 51 of the Public Health Acts Amendment Act, 1890, to various village institutes in this division. Such licences are endorsed to the effect that dancing must cease at midnight. For various reasons from time to time applications are made by the secretaries of these village institutes for permission to continue dancing until 1 *a.m.* Applications are usually by letter and are invariably granted, but no form of extension is issued. I simply write and tell the applicants that consent has been granted.

(*b*) On an application for approval of plans for structural alterations to licensed premises.

Do you consider that a fee of 5*s.* is payable in both cases? NON.

Answer.

In our opinion, a fee of 5*s.* is chargeable in each of the cases mentioned. *See* as to (*b*) our answer to a P.P. at 97 J.P.N. 348.

7.—Magistrates—*Jurisdiction and powers—Venue—Cases to which s.* 28 *Criminal Justice Act*, 1948 *applies—Application of s.* 11 (2) *Criminal Justice Act*, 1925, *when they are dealt with under s.* 28 (1) *of the* 1948 *Act.*

A defendant is being prosecuted under the Goods and Services (Price Control) Act, 1941, as amended for selling goods in excess of the maximum price for an offence committed within the jurisdiction of this division and the offence is one punishable on summary conviction or on indictment. The prosecutor also wishes my justices to accept jurisdiction by virtue of s. 11 (2) of the Criminal Justice Act, 1925, in respect of an exactly similar offence committed by the same defendant in the city of X, but I am in some doubt whether it is an indictable offence and whether s. 11 (2) applies. The prosecution desire summary trial. I have read the article at 113 J.P.N. 72. May I inquire if the coming into operation of s. 28 of the Criminal Justice Act, 1948, has any bearing on whether such an offence is still to be regarded as an indictable offence. I have also read Home Office Circular No. 265/1948 dated December 14, 1948, para. (3) at p. 9, wherein it is stated there is no question of obtaining the consent of the accused to summary trial and I am inclined to the view that in such circumstances the offence is not an indictable offence. If it has to be regarded as an indictable offence, surely the defendant should have a right of election as to the place of the trial but this does not seem to be the case if the prosecutor applies for summary trial and the court agrees, unless, of course, it is an offence in which he has a right to claim trial by jury because of s. 17 Summary Jurisdiction Act, 1879.

I shall be very glad of your opinion as to whether, in the circumstances, my justices have jurisdiction to hear the case committed in the city of X. J. SOY.

Answer.

Section 28 came into force on December 27, 1948, and was, therefore, in operation when the article referred to was published. In *R.* v. *Fussell* [1951] 2 All E.R. 761; 115 J.P. 562, the Lord Chief Justice stated that *Hastings & Folkestone Glassworks, Ltd.* v. *Kalson* [1948] 2 All E.R. 1013; 112 J.P. 242, laid it down in the clearest possible terms that *an offence triable either summarily or on indictment is for all purposes an indictable offence.* In view of this we think it must be accepted that s. 11 (2) of the 1925 Act does apply to cases covered by s. 28 of the 1948 Act, even when the procedure is regulated by s. 28 (1). We think, therefore, that the justices have jurisdiction to hear the cases alleged to have been committed in the city of X.

8.—Magistrates—Practice and procedure—*Calling cases by announcing names of informant (or complainant) and defendant—Suggestion by press that defendant's address should be read out.*

I shall be obliged for your advice on the following point.

At the petty session court here the usual practice is for each case to be called by reading out the names of the prosecutor and defendant. A request has now been made by the press that the defendant's address also be read in open court in order to safeguard the press in the matter of privilege. This seems to me to be a perfectly reasonable suggestion, but I shall be glad if you can inform me if this is a common practice or not in other courts, and any other comments you can make as to the suitability or otherwise of such a course being adopted here. J. FYNN.

Answer.

We see no objection to the suggested practice if the court is prepared to agree, but we have never heard of its being done in other courts. The defendant's address is on the summons which is before the court, and we think that the press representatives may be allowed to see the summons to ascertain what the address is. We believe this is what is done in a number of courts, and convenient arrangements for this purpose are not difficult to make.

9.—Milk—*Bottles—"Hoarding"—What offence?*

The writer has recently seen in a trade journal what purported to be a report of the prosecution before magistrates for hoarding milk bottles. The report did not indicate under what Act or Regulations the proceedings were brought and we have been unable so far to find under what Act the hoarding is an offence.

Could you please let us know whether such hoarding is an offence and the authority therefor? STED.

Answer.

Doubtless the proceedings were instituted under the Milk (Control and Maximum Prices) (Great Britain) Order, 1947, (S.R.O. No. 2032) made by the Minister of Food. *See* para. 17 (6) of the Order.

10.—Public Health Act, 1936—*Statutory nuisance—Burning refuse dump.*

A rural district council has in its area a piece of ground that is being used by the occupier thereof as a rubbish tip. Various persons (including an adjoining urban district council) deposit rubbish on this ground, and the occupier burns it from time to time. When the burning takes place a great deal of smoke is emitted, and causes much inconvenience and nuisance to the persons living in the immediate vicinity. Complaints have been made to the rural district council, which has now decided to take steps to have the nuisance abated. We shall be glad if you will kindly give us your opinion as to how the rural district council should proceed; whether it can proceed under s. 92 and the following sections of the Public Health Act, 1936, also whether the nuisance caused by the smoke can be brought within s. 101 of that Act. PELL.

Answer.

Proceedings may be taken under ss. 92 *et seq* of the Public Health Act, 1936. They cannot be taken under s. 101 which does not apply to such a case.

11.—Real Property—*Hedge dividing gardens—Rights of adjoining owners.*

The parting hedge of two semi-detached owned-occupied houses belongs to one of the occupiers. Would you inform me of the right of the owner as to:

1. The height the hedge may be cut.
2. The right to enter the neighbour's land to cut the other side of the hedge.
3. The distance the hedge may be allowed to grow on the other side (query nine inches over the boundary).
4. If no agreement between the two occupiers to what extent the neighbour may cut his side of the hedge. PALS.

Answer.

1. There is no limitation unless the height obstructs any right to light in respect of a building, or is in some other way an actionable nuisance to some person.
2. There is no such right.
3. There is no right to grow the hedge over the boundary, and the neighbout may cut the hedge back to the boundary.
4. He may cut it back to the boundary and no further. He may not cut it back further in anticipation of its growing over the boundary.

12.—Road Traffic Acts—1. *Stopping in case of accident—Road Traffic Act*, 1930, *s.* 22 (1)*—Accident the fault of someone else—Application of s.* 22. 2. *Road Fund Licence—Renewal—Application within fourteen days after expiry not accompanied by insurance certificate—Certificate sent thereafter—Liability to penalty.*

A drives a motor-car on the road on January 5, without at that time having renewed his road fund licence. He is involved in an accident which arises owing to the negligence of a small boy on a bicycle who is proceeding in the opposite direction and who runs into the rear offside wing of A's car, which was proceeding at a slow speed on its correct side of the road. The boy admits that he had the bicycle only five days, that he was speeding along the road (having been dared to do so by another boy who was cycling with him) and that the accident arose through his fault, he having deviated off his proper course and run into the car. A does not see the bicycle strike his car but hears a bang and feels a bump which he at first thinks is a weak spring on the

car going over a pot-hole in the road. He accordingly at first proceeds down the road without stopping. He finally stops about 200 yards down the road.

(During this time the following events occur : A begins to wonder whether it is the spring, as he realizes the spring is on his near side, whereas the bump was on the off-side ; A looks in his mirror and sees that the cyclists appear to have stopped so he thinks something may have hit him and wonders whether it could be one of the cyclists ; A thinks of stopping but his battery is very weak and he is not a strong man and he is afraid that if he stops he will not be able to start the engine again as he is unable to crank it up himself ; A decides to drive another 200 yards down the road and secure the help of someone who he thinks will be there to assist him with the car and assist if anyone was injured in striking the car ; someone standing by who witnessed the accident shouts out to A that there has been an accident and that he should stop ; A shouts back that he cannot stop or the car will stall ; A then considers that if he does not stop onlookers will think he has a guilty mind and is trying to make a getaway ; A then decides to risk the engine stalling and stops).

Whilst these events were occurring and these thoughts were going through A's mind the car covered a distance of approximately 200 yards over a period of, say, forty-five seconds. When A eventually stopped, the car did not stall and he reversed it back to the scene of the accident and found the boy injured in the roadway and being assisted by a passer-by. A then picked up the boy in his car and took him to hospital. A did not give his name and address to anyone. A did not report the accident to the police because he did not think he was legally obliged to do so if the accident was not his fault.

On January 13, A posted to the local county council an application on the appropriate form for renewal of his motor vehicle licence, accompanied by the registration book and a money order for the correct amount. A had in his possession a certificate of insurance but, in error, omitted to enclose it with the application. A's application was received by the county council on January 14 and they sent him a post-card on this day acknowledging receipt of his application but pointing out that the certificate of insurance had not been sent. A received this post card on January 15 and posted the certificate of insurance on the same day. This was received by the county council on January 16 and a licence issued to A on the same day.

A was summoned for (*a*) failing to stop contrary to s. 22 (1) of the Road Traffic Act, 1930, (*b*) failing to report an accident contrary to subs. (2) of the same section. The evidence included the following : A witness for the prosecution said that the car stopped within ninety yards of the place where the accident occurred and that he thought the driver would not have known that an accident had happened. He said that someone further up the road shouted to the car to stop and that it thereupon did stop and reversed back. The rest of the evidence before the justices was to the effect that our client had felt a bump and heard a noise at the time of the accident which he took to be the weak spring going over a pot-hole, and that he did not appreciate there was an accident until someone shouted to him, when he stopped immediately and reversed back. On these facts the bench convicted him on both charges, apparently taking the view that he knew, or should have known, from the bump that an accident had happened and have stopped at once. A has also received a letter from the county council informing him that their records show that the car was used on January 5 but that " his application for a renewal of the licence was not complete " before the expiry of the " days of grace." A wrote the usual letter explaining the circumstances and has received a reply that an offence has been committed under s.15 of the Vehicles (Excise) Act, 1949 (" Licence not having been renewed " until after expiry of " days of grace ") and has been offered a mitigated penalty of £1.

We shall be glad to have your opinion on the following points :

(*a*) If, as in this case, the accident arises owing to the negligence of someone other than the driver of the car, can it be said that the accident did not occur " owing to the presence of a motor vehicle on the road " but occurred " owing to the negligence of the cyclist " ? In other words, if the substantial cause of the accident is the negligence of the person injured and the motorist is acting properly, can one not argue that the accident did not occur owing to the presence of the vehicle on the road ? If so, this appears to be a defence to both summonses.

(*b*) If your view is that the better opinion is that the section applies even though the substantial cause of the accident is the negligence of another party, do you think the interpretation suggested above was worth arguing before magistrates and might possibly be upheld on appeal from them ? Do you know of any definite decided case on the point when this interpretation has been argued ?

(*c*) On the facts above do you consider there was a failure to stop as contemplated by s. 22 (1) ? Can you refer us to any decided case on the question of how immediate the stopping must be ?

(*d*) What is the authority for the fourteen days of grace and what must be done within the period ? If it is merely that an application must be made within the period it seems to us that one could argue that the application was made even though the certificate of insurance was not sent until the following day. Would A be well advised to accept the mitigated penalty on the grounds that an offence has been committed under s. 15, or not ?

(*e*) Generally. JUAY.

Answer.

(*a*) We think the section is meant to ensure that in all circumstances particulars are given or the police are informed, whoever may be to blame. Were it not so, few accidents would be reported, since the motorist could nearly always say that he believed the fault to lie with some other person.

(*b*) We know of no case in point. Our view is that the suggested argument would be unlikely to be accepted by the High Court.

(*c*) We cannot refer to any such case. It was A's duty to stop as soon as he was aware that his car had been involved in any accident, and he was not entitled to take into account the possibility of his engine stalling. He did, however, return to the scene of the accident almost at once, and we think that the court if they accepted his version of the incident might well have held that he had complied with s. 22 (1). We assume that no one asked him for his name and address. We cannot say, however, that we think it was not possible to convict on the evidence given.

(*d*) We think there is no authority. It is merely a convenient practice adopted by licensing authorities that they do not prosecute if the licence is renewed within fourteen days after its expiry. We think A would have no defence to a summons, but it is difficult to guess what, in the somewhat unusual circumstances, the magistrates would consider an appropriate penalty. It might save trouble to pay the mitigated penalty of £1.

(*e*) He should have reported the accident under s. 22 (2).

13.—Shops Act, 1950—*Weekly half day's closing—No day specified.*

Section 1 (3) of the Shops Act, 1950, provides that the weekly half holiday shall be such day as the shopkeeper may specify in a notice fixed in the shop. This provision does not impose a duty to display such a notice and if in fact no notice is displayed, presumably there is no specified day. On the other hand, the same section makes it an offence to change " the day " oftener than once in three months. The only other way of fixing the half holiday is by order of the authority and the power to make such an order is limited. It seems, therefore, that the word " may " in s. 1 (3) should be construed as " shall " if the sense and purpose of the section as a whole is to be preserved, but I should be glad to have your views on this and to know whether there are any decided cases which bear on the point. There seems to be an impression among inspectors that displaying a notice is obligatory, and that proceedings can be taken for not displaying the notice. PUFF.

Answer.

We do not think the impression amongst inspectors is well founded : the Act of 1950, like its forerunner the Act of 1912, fails to say in terms that the shopkeeper shall display a notice. This being so, how could the inspector frame a charge for the purposes of s. 71 (3), which provides for the summary prosecution of offences ? We have seen it suggested that a duty is implied from the power given by s. 1 (3), and that this duty is enforceable by criminal process. But the process would be indictment at common law, and the principle behind this has, so far as we know, been applied only in respect of public duties : *Julius* v. *Bishop of Oxford* (1880) 44 J.P. 600, not for the purpose of enforcing modern legislation of the class here in question, which is normally enforceable summarily.

We do not find a decision upon the subsection mentioned, but the section, which follows s. 4 of the Shops Act, 1912, begins with an unambiguous enactment, that every shop shall be closed in the afternoon on one week day in every week. Subsection (2) enables the local authority to fix this day. Where they do not, subs. (3) gives the shopkeeper a choice, but if he fails to specify a day and to close on that day there will, when the week ends, have been an offence. He cannot defeat the positive enactment in subs. (1) in the manner suggested.

14.—Trade Union Act, 1871—*Withholding money—Whether continuing offence.*

A defendant is charged that, on a day more than six months before the issue of a summons, being in possession of money belonging to a trade union, he did wilfully withhold the same.

Is this a continuing offence so that the fact that it was originally withheld more than six months before the issue of the summons is no defence ? And if so should it be stated in the summons that, having withheld the money more than six months ago, he has continued to so withhold it. SURI.

Answer.

This is a continuing offence, *see* Note (*g*) on p. 2357 of *Stone* (1951) and cases there cited. The time limit does not apply while the withholding continues. It would be well to amend the summons by adding such words as " and have since continued to withhold." If the defendant desires an adjournment to consider the new form of the charge, this should be granted.

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Secretary to the Probation Committee.

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G. C. LIGHTFOOT,
Clerk of the East Suffolk Magistrates' Courts Committee.

December 24, 1952.

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L. EDGAR STEPHENS,
Clerk of the Council.

Shire Hall, Warwick.
December 11, 1952.

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